



Preventing human trafficking for the purpose of sexual exploitation: the need for a bottom-up approach

The case-study of Brazilians trafficked to Portugal

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**Preventing human trafficking for the purpose of sexual exploitation:
the need for a bottom-up approach**

The case-study of Brazilians trafficked to Portugal

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Commitment and dedication stem from the consciousness that too many individuals worldwide live in constant avoidable vulnerability and from the awareness that many people from different parts of the world share with me the conviction that

'outro mundo é possível'.

Abstract

Trafficked people experience multiple processes of avoidable human rights violation in countries of origin, transit and destination.

In recent years, international, regional organizations and States, have adopted an anti-trafficking hard and soft law approach based on an 'integrated perspective' consistent with the 'three P's approach', namely prosecution, protection and prevention. However, disposals concerning prevention, meant as human-centred public policies and targeted development cooperation initiatives aimed at reducing potential victims' vulnerability in the countries of origin, are neither legally binding on States nor concretely translated into national anti-trafficking strategies, that keep being focused mainly on reactive and protective measures. These last sets of policies, although complementary, do not contribute to the eradication of potential victims' vulnerability. A human rights-centred perspective entails going grassroots in order to identify the daily contextual threats that make individuals likely to believe in traffickers' promises in order to escape to hopeless living conditions. In fact, a bottom-up approach implies investing resources to eradicate the root-causes at the basis of human trafficking that go beyond the mere presence of traffickers and lie in women's socio-economic vulnerability.

The case-study of Brazilians trafficked to Portugal for the purpose of sexual exploitation shows that human trafficking turns into the mean through which many Brazilian women attempt to escape everyday socio-economic vulnerability. For this very reason, it is argued that anti-trafficking policies, carried out also in cooperation with non-traditional bottom-up stakeholders, must reach potential victims of trafficking in their own daily context and provide them with viable alternatives in order to be effective and human.

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List of Abbreviations

ACIDI: High Commission for Immigration and Intercultural Dialogue.

CIG: Commission for Citizenship and Gender Equality.

GCIM: Global Commission on International Migration.

GRETA: Group of experts against trafficking in human beings, Council of Europe.

IPAD: Portuguese Institute for Development Support.

LDCs: Least Developed Countries.

NGOs: Non Governmental Organizations.

OSCE: Organization for Security and Cooperation in Europe.

OHCHR: Office of the High Commissioner for Human Rights.

UN.GIFT: United Nations Global Initiative to Fight Human Trafficking.

UNDP: United Nations Development Program.

UNHCHR: United Nations Office of the High Commissioner on Human Rights.

UNODC: United Nations Office on Drugs and Crime.

Introduction

Human *commodification* is not over despite the fact that slave trade was abolished in the nineteenth century. Human trafficking for the purpose of sexual exploitation represents one of the most paradoxical manifestations of worldwide man-made contemporary imbalances, negatively affecting trafficked people's freedom and human rights. The recruitment and the transportation of young girls from their country of origin to be sexually exploited in economically developed countries has turned into a human flesh business. However, it is manifest that the entire process of trafficking further erodes individuals' vulnerability, depriving them from freedom and autonomy over their lives. In the last years international and regional organizations as well as states have adopted legislation and subsequent policies aimed at counter-acting human trafficking.

However, despite the influx of funds devoted to such initiatives, more and more young women keep on being recruited in developing countries to be sexually exploited in the so-called 'first world'. Anti-trafficking strategies do not seem to reach their aim, namely to reduce and progressively eradicate the phenomenon. The research goes through the main anti-trafficking strategies and argues that they may be ineffective as they do not approach the issue from a comprehensive and *bottom-up perspective*.

Approaching counter trafficking comprehensively implies adopting an integrated or 'three Ps' approach, namely investing on prosecution, protection and prevention, both in legislation and in policies. Such approach, in order to be human rights centred, needs to prioritize trafficked people's human rights and wellbeing over any other aspect. The research suggests that a genuine human rights approach should aim, first of all, at preventing potential victims of trafficking from turning into victims. This should be considered the main objective of any prevention activity. However, it is notorious that anti-trafficking strategies mainly have to do with reactive policies, as the issue is still perceived as almost exclusively organized crime driven. These kinds of measures, although necessary, will fail to address the issue unless they are complemented by strategies aimed at eradicating the root-causes at the basis of human trafficking, namely the factors that make individuals vulnerable to human trafficking, besides the mere

presence of organized crime. In fact, the research, based on evidence, rejects the idea that traffickers, although responsible for exploitation, fuel the entire process. It is argued that human trafficking has turned into a 'human flesh business' and, like any other business, is based on the encounter of the demand and the supply, facilitated by intermediaries. The demand is represented by the request for cheap sexual services in the countries of destination, the supply stems from the availability of vulnerable women willing to escape everyday precarious living conditions. Traffickers are considered as mediating these two existing phenomena by exploiting vulnerable people's need and will to achieve better living standards. In fact, as the case-study of Brazilians trafficked to Portugal attempts to show, vulnerable individuals may consent to be trafficked, even if unaware of the exploitative conditions of the bargain, in order to escape from daily socio-economic vulnerability and precariousness in the country of origin.

For this very reason, it is argued that it is crucial to go grassroots and to consider 'the supply', that is to say, the reasons and the factors that make more and more people likely to be easily recruited, transported and exploited. The research suggests that anti-trafficking strategies should be planned and implemented consistently to a *bottom-up* human rights *approach*, that is to say, they should be targeted to potential victims and they should be aimed at eradicating their socio-economic vulnerability. In fact, it is argued that the issue of human trafficking can be approached from different angles and that anti-trafficking policies are inevitably constructed on the basis of the objectives that are meant to be achieved by the stakeholders responsible for the planning, the implementation and the funding of the strategies.

This Thesis is composed of four chapters dealing, respectively, with international and European soft and hard law on prevention in Chapter One, anti-trafficking and prevention policies in Chapter Two, the case-study of Brazilians trafficked to Portugal in Chapter Three and the main stakeholders acting in Brazil in Chapter Four. These topics, complementing each other, are analyzed in order to provide a solid overview of the existing legal and policy scenario with special reference to the Portuguese and Brazilian context. However, it is crucial to underline that the analysis goes beyond mere description and it considers the *perspectives* driving the above-mentioned policies as it argued that the more bottom-up they go, the more likely are to be effective.

Chapter 1

INTERNATIONAL AND EUROPEAN HARD AND SOFT LAW INSTRUMENTS ON HUMAN TRAFFICKING: THE FOCUS ON PREVENTION

1.1 The definition of the conduct: the United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children

Over the last few years the rise of trafficking related legislation and standards has been unprecedented in international law, both in speed and substance.

Until 2003 the only normative universal instrument in force dealing explicitly with trafficking in human beings, even if limited to the sole dimension of sexual exploitation, was the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others, adopted in 1949.² This Convention, abolishing any forms of regulation of prostitution, introduced the abolitionist approach in relation to sex business, influencing several national legislations on the issue.

Explicit reference to the conduct of trafficking was also made in other general international human rights treaties, however they did not concur to provide any definition of the conduct.³ This happened only in 2000 with the adoption of the Protocol

2 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others, General Assembly Resolution 317 (IV), 2 December 1949. However the Convention does not provide any comprehensive definition of human trafficking. As Stated in article 1, the Convention is focused on the criminalization of any activity connected to prostitution such as the procurement, the enticement and the leading away of a person for the purpose of prostitution, the exploitation of prostitution itself, even with the consent of the person. It also criminalizes the renting of a building used as brothel and the running of a brothel itself.

3 Several normative instruments have been adopted before 2000, year of adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. These are, respectively, the United Nations Declaration of the Rights of the Child, General Assembly Resolution 1386 (XIV), 20 November 1959; the United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104 of 20 December 1993; the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, General Assembly Resolution 34/180, 18 December 1979; the United Nations Convention on the Rights of the Child, General Assembly Resolution, 44/25 20 November 1989; the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, General Assembly Resolution, A/RES/54/263, 25 May 2000. Reference to slave trade is in article 3 of the Supplementary Convention on the Abolition of Slavery, the Slave trade and institutions and practices similar to slavery,

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,⁴ also known as Palermo Protocol on trafficking in human beings. The Protocol is the main legally binding instrument defining and regulating trafficking at universal level. It is interesting to notice that the negotiation process,⁵ as well as the entry into force of the Protocol, in 2003, was ‘amazingly rapid’⁶ if compared to the main human rights treaties.

Anne Gallagher, Adviser on Trafficking to the UN Commissioner for Human Rights and Manager of the OHCHR Anti-trafficking Programme, remarked that:

‘While human rights concerns may have provided some impetus (or cover) for collective action, it is sovereignty/security issues surrounding trafficking and migrant smuggling which are the true driving force behind such efforts. Wealthy States are increasingly concerned that the actions of traffickers and migrant smugglers interfere with orderly migration and facilitate the circumvention of national immigration restrictions’.⁷

Conference of Plenipotentiaries convened by Economic and Social Council, Resolution 608 (XXI) of 30 April 1956. For a detailed overview of the legal instruments making reference to trafficking in human beings for the purpose of sexual exploitation see Degani, Vietti, 2007.

⁴ United Nations Convention against Transnational Organized Crime, General Assembly Resolution, 55/25, 15 November 2000. This Convention is supplemented by three Protocols. Two of them, respectively, on human trafficking and on human smuggling will be analyzed in the course of the dissertation. Another Protocol has been recently adopted, namely the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition trafficking in firearms. General Assembly Resolution 55/255, 31 May 2001. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, General Assembly Resolution 55/25, 15 November 2000, entered into force in 2003. Signatory States to the Protocol are 117, Parties are 119. Source United Nations Office on Drug and Crime (UNODC) <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>, (consulted on 6 May 2008).

⁵ Gallagher, 2001, p. 975-976. The author underlines that in December 1998, the United Nations General Assembly established an intergovernmental, ad-hoc committee responsible for the development of a new legal regime to fight transnational organized crime. In October 2000, after eleven sessions, involving the participation of more than 120 States, the ad-hoc Committee concluded its work.

⁶ Gallagher, 2006, p.165.

⁷ Gallagher, 2001, p. 976. The remark made by this expert opens the discussion on the issue of irregular migration and State sovereignty. As stressed by Koser ‘Put simply, the argument is that States have a sovereign right to control who crosses their borders, and that by undermining that control, irregular migrants therefore threaten sovereignty. It follows that stopping irregular migration is fundamental to reasserting full sovereignty’. Koser, 2005, p. 10. Jordan and Duvell, argue that ‘Irregular migration – crossing borders without proper authority, or violating the conditions for entering another country- has been seen as a threat to the living standards and the cultures of citizens of rich, predominantly white First World States’. Jordan and Duvell, 2002, p. 15. On the attitude of States towards human trafficking see chapter Second.

The Protocol has become the core treaty inspiring all the subsequent national and regional soft and hard law instruments on the issue. Its main aim is to prevent and combat trafficking, to protect and assist the victims and to internationalize the efforts promoting cooperation⁸ among State parties.⁹ The Protocol provides the first comprehensive and inclusive definition of the conduct of trafficking in human beings, that applies in particular to women and children, but not exclusively to them.¹⁰ Article 3 opens by referring to trafficking as ‘the recruitment, transportation, transfer, harbouring or receipt of persons’. Subparagraph (a) goes on specifying the conditions in which the conduct has to take place in order turn into trafficking, such as:

‘by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

Exploitation lies at the foundation of the crime of human trafficking and it is also one of the distinguishing elements in relation to the conduct of smuggling of migrants, that is covered by the other Palermo Protocol, that is to say the Protocol against the Smuggling of Migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime.¹¹

⁸ On the transnational nature of the crime of trafficking and the subsequent need for legislative and judicial cooperation see Rodrigues, 2000, pp. 15 – 28.

⁹ Article 2 of the Protocol.

¹⁰ The earliest drafts of the Protocol were limited exclusively to trafficking in women and children. Following the opposition of some States as well as intergovernmental and nongovernmental organizations, the General Assembly decided to extend the mandate of the Ad Hoc Committee in order to cover trafficking in human beings, especially women and children.

¹¹ Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution, 55/25, 15 November 2000. The Protocol entered into on 28 January 2004, in accordance with article 22. Signatories States to the Protocol are 112 , Parties are 112. Source United Nations Office on Drug and Crime (UNODC) <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>, (consulted on 6 May 2008). Article 3 (a) defines smuggling as ‘procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident’.

Human trafficking is therefore defined as a conduct experienced by someone, it is not a deliberate choice.¹² There are at least two stakeholders involved in such a conduct: the trafficker and the trafficked person. The first one is in a position of strength and domination taking advantage of the trafficked person, who on the contrary is in a position of vulnerability, is subjected to the trafficker and has no negotiation power in relation to the entire process of trafficking. It is crucial to underline that that article 3 (b) defines that ‘the consent of a victim of trafficking (...) shall be irrelevant where any of the means set forth in subparagraph (a) have been used’.

1.1.1 The dimension of prevention in the Palermo Protocol: from a comprehensive conceptualization towards States’ concrete obligations

As already mentioned, the Protocol deals with the three main issues of prosecution, protection and prevention, known as the ‘three Ps’ approach to trafficking.

Article 5 binds State Parties to adopt legislative measures to establish in their own national criminal code criminal offences in order to punish the attempt to commit the following conducts: the offence of trafficking, the participation as accomplice and the organizing or directing of other persons to commit the offence of trafficking. Article 6 deals with the assistance and the protection of victims, it calls on State parties to protect the privacy and the identity of victims in legal proceedings, to provide assistance in criminal proceedings and to implement measures to provide for the physical, psychological and social recovery¹³ of victims of trafficking. Article 7 calls on State

¹² On the other hand, it is also highly debatable that smuggling can be considered a free choice even if the potential migrants themselves contact and buy a service – the illegal crossing of one or manifold borders – by a smuggler. Choosing migration as a ‘survival strategy’ has little to do with human security and human rights. See Global Commission on International Migration, 2005, p. 58. Even if is a ‘deliberate’ choice, the potential migrant finds himself or herself in a position of inferiority and vulnerability therefore the frontier between trafficking and smuggling is not so clear as smuggled people can first of all be endangered and then easily be subjected to exploitation both in transit and destination countries. The element of ‘exploitation’ being considered as the traditional distinguishing elements between the two conducts has been criticized and contested by several experts and authors. On the issue see for instance Grant S., 2005. On the issue of vulnerability and exploitation in the case of smuggling see Ventrella McCreight, 2006, p. 107.

¹³ The article makes reference to a) appropriate housing, b) counselling and information, in particular with regard to their legal rights in a language that the victims can understand, c) medical, psychological and material assistance, d) employment, educational and training opportunities.

parties to consider adopting legislative or other measures to let victims remain in their territory, temporarily or permanently. Article 8 focuses on the issue of victims repatriation and recommends States to take into due regards the safety of the victim.

Article 9 deals with the dimension of prevention stating that:

- ‘1. States Parties shall establish comprehensive policies, programs and other measures:
 - a) To prevent and combat trafficking in persons; (...)
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons. (...)
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social and cultural measures, including through bilateral and multilateral cooperation to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking’.

The article itself, very comprehensive and inclusive, is pivotal, as it is the first instrument acknowledging the need for three different but at the same time complementary types of intervention in the prevention of human trafficking, namely awareness raising, the root-causes approach and the discouragement of the demand in the countries of destination. By underlining the need to act both on potential customers in the countries of transit and destination and on potential victims in the countries of origin, it is implicitly acknowledged that human trafficking is a business characterized by the encounter of demand and supply, facilitated by the organized crime.¹⁴

In addition, paragraph four proves to be key as the international community acknowledged for the first time in a hard law instrument that trafficked people’s

¹⁴ John Salt refers that there are two theoretical approaches to human trafficking. The criminal approach bases all the interventions on the legalistic view. On the other hand the economic or business approach suggests that ‘trafficking should be viewed as a consequence of the commodification of migration, from which organizations are able to make profits on people’s mobility. He also refers to the ‘humanitarian approach’, however he underlines that there is no coherent theoretical view yet concerning this approach. See Salt, 2000, p. 35.

vulnerability is the result of poverty, underdevelopment and lack of equal opportunities. Although the Protocol does not refer to human trafficking as ‘violation of human rights and an offence against the dignity and the integrity of the human being’,¹⁵ it calls in the Preamble for ‘a comprehensive international approach in the countries of origin, transit and destination’ including for instance ‘measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking (...) by protecting their international human rights’. The integrated perspective entails also multidisciplinary co-operation, balance among the dimensions of prevention, prosecution, protection as well as the acknowledgement that human trafficking is a complex issue related to a wide variety of phenomena such as migration, organized crime, labour, prostitution, human rights, unequal international economic relationships, gender issues, violence against women, the feminization of poverty. Despite the inclusive and comprehensive conceptualization of prevention in article 9, it is evident that there is strong imbalance between the interconnected dimension of criminalization and the one of prevention and protection.

In fact, mandatory obligations for States in the Protocol are few and regard only prosecution, border control, cooperation between national law enforcement agencies and sanctions on commercial carriers. This implies that States are encouraged but are not compelled to implement the disposals concerning prevention.¹⁶

On the one hand, it is argued that the above-mentioned imbalance finds its rationale in the very nature of prevention activities, related to the sphere of economic, social and cultural rights.¹⁷ Despite the existence of specific Conventions on these sets of human rights, such as the International Covenant on Economic, Social and Cultural Rights¹⁸ and the subsequent establishment of the Committee on Economic, Social and Cultural

15 Such Statement is contained in the Preamble of the Council of Europe Convention on Action against Trafficking in Human Beings, Committee of Ministers, CETS N° 197, 3 May 2005. It entered into force on 1st February 2008. This Convention is considered the most protective and comprehensive legally binding instrument on the topic integrating the human rights approach.

¹⁶ Gallagher, 2006.

17 On the nature of States parties obligations with reference to the International Covenant on Economic, Social and Cultural Rights, see: Office of the High Commissioner for Human Rights, *The nature of States parties obligations* (Art. 2, par.1), CESCR General comment 3, 14 December 1990.

¹⁸ International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution, 2200A(XXI), 16 December 1966.

Rights,¹⁹ some authors argue that the nature of positive obligations is deliberately made vague, general and recommendatory by States when they draft and adopt any legal instruments.²⁰ On the other hand, it is argued that although the United Nations Protocol refers to the need to incorporate a human rights approach,²¹ it may not be defined genuinely consistent with the human rights approach. In fact, it may be argued that, despite the efforts to include a broad and extensive definition of prevention, States have taken a step backward by making these disposals merely recommendatory.

1.2 The United Nations Office of the High Commissioner for Human Rights ‘Principles and Guidelines on Trafficking in Human Beings’: An integrated human rights approach to prevention

The United Nations²² have developed another instrument that, although non-binding, deals explicitly with the primacy of human rights and the human rights approach in counter-trafficking. The ‘Recommended Principles and Guidelines on human rights and human trafficking’ by the United Nations Office of the High Commissioner for Human Rights (UNHCHR)²³ have influenced all the subsequent legislation and policies on the issue.

The document itself incorporates the human rights approach by prioritizing potential victims’ human rights as well as trafficked people’s human rights. The instrument opens by stating that ‘violations of human rights are both a cause and a consequence of

¹⁹ It is crucial to underline that the Committee cannot consider individual complaints, although a draft Optional Protocol to the Covenant is under consideration which could give the Committee competence in this regard. Source <http://www2.ohchr.org/english/bodies/cescr/index.htm> (consulted on 12 April 2008).

²⁰ Fredman, 2006, 510. In particular concerning the inter-related existence of the right to development see Marks, 2004, pp. 137-168.

²¹ On the concept of human rights approach to human trafficking see the following paragraph.

²² It is pivotal to remark that the United Nations commitment to counteract human trafficking has resulted in the appointment, by the Commission on Human Rights in 2004, of a Special Rapporteur on trafficking in persons, especially women and children to focus on the human rights aspects of the victims of trafficking. The Special Rapporteur’s mandate consists in submitting annual reports to the Commission, now, Human Rights Council, together with recommendations on measures required to uphold and protect the human rights of the victims. He or she undertakes country visits to study the situation in situ and formulate recommendations to prevent and or combat trafficking and protect the human rights of its victims, and finally, takes action on violations committed against trafficked persons through the receipt of individual complaints and the subsequent sending of urgent appeals. Concluding, the United Nations, besides providing the first legally binding comprehensive definition on trafficking in human beings, have been and still are one of the main stakeholders counter-acting human trafficking. Source <http://www2.ohchr.org/english/issues/trafficking/index.htm> (consulted on 30 March 2008);

²³ Recommended Principles and Guidelines on human rights and human trafficking, United Nations Office of the High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, Economic and Social Council, 68/2002/Add.1, 20 May 2002.

trafficking in persons'. They represent a cause, in fact people who are trafficked are vulnerable and defenceless as their human rights have not been neither positively implemented nor protected. On the one hand, human rights violations result from the conduct of trafficking itself, because, as mentioned above, in the definition of trafficking contained in the Palermo Protocol, trafficked people are subjected to control and exploitation by traffickers. On the other hand, trafficked people's human rights and human security²⁴ undergo multiple process of erosion in the country of origin, in the countries of transit and in the country of destination.

Through these Principles and Guidelines, the UNHCHR aims at promoting the integration of a human rights perspective into national, regional and international counter-trafficking legislations, policies and measures. State parties as well as inter-governmental organizations are urged to take into account the human rights of trafficked persons when planning any intervention to combat trafficking²⁵ and to protect, assist²⁶ and provide redress to victims'.²⁷ In particular, it acknowledges that anti-trafficking measures should be carefully planned and implemented in order not to 'adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-

²⁴ Human security is meant according to the definitions provided by the United Nations Development Program and by the Commission on Human Security. The 'Human Development Report 1994' by the United Nations Development Program (UNDP) defines human security as having two main components, namely freedom from want and freedom from fear, see United Nations Development Program, 1994, pp. 23 - 24. The Commission on Human Security borrows the concept elaborated by the UNDP, in particular the two dimensions, and expands the concept by stating that human security means 'to protect the vital core of all human lives in ways that enhance human freedom and human fulfilment. Human security means protecting fundamental freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strength and aspirations'. See Commission on Human Security, 2003, p. 4.

²⁵ Concerning the issue of criminalization, the document calls on States to ensure adequate legal framework (Guideline 4). In particular it recommends States to harmonize legal definitions procedures and cooperation at the national and regional levels in accordance with international standards. It also deals with the need to ensure that legislation prevents trafficked persons from being prosecuted, detained or punished for their illegal entry, residence or for the activities they are practising as a direct consequence of their status of trafficked people. It calls on States not to be involved in any summary deportation or return when there is ground to believe that such action would be harmful to the victim or to his/her family. It also urges States to ensure an adequate law enforcement response (Guideline 5).

²⁶ The aspect of protection, covered by Guideline 1 and 6, makes reference to the general principle of ensuring protection and support without any discrimination. Protection should mean safe and adequate shelter, namely trafficked people should not be held in immigration detention centres, other detention facilities or vagrant houses. It also deals with access to counselling and primary health care, urging States not to subject trafficked people to mandatory testing for diseases, including HIV/AIDS. It calls for protection from harms, threats or intimidation by traffickers or associated persons.

²⁷ Recommended Principles and Guidelines on human rights and human trafficking, United Nations Office of the High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, Economic and Social Council, 68/2002/Add.1, 20 May 2002. Principle 1.

seekers’.²⁸ It is worthwhile noticing that, even if the document is non-binding, it affirms that: ‘States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons’. The document provides an integrated conceptualization of prevention,²⁹ specifying and extending its contents on the one hand and going beyond the three dimensions offered by the Palermo Protocol on the other hand. States are urged to focus on the demand as a root cause as well as on the factors in the countries of origin that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. The Document calls on States to develop, in cooperation with inter-governmental and non-governmental organizations, programmes offering livelihood opportunities including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups. Further actions include for instance the improvement of children’s access to educational opportunities, the increase of the level of school attendance, in particular by girl children. The UNHCHR also takes into account the dimension of awareness raising by underling the need for potential migrants, especially women, to be properly informed about the risks of migration; besides it stresses the importance to inform potential victims of trafficking about available avenues for legal, non-exploitative migration. Guideline 7 is particularly crucial as it urges States to review and modify policies that may compel people to resort to irregular and vulnerable labour migration by examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. It also makes implicit reference to corruption by remarking the need to strengthen the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. Finally it deals with the necessity to provide every individual with appropriate legal documentation for birth, citizenship and marriage in order to reduce their vulnerability.

²⁸ *Ibidem*, Principle 3.

²⁹ Recommended Principles and Guidelines on human rights and human trafficking, United Nations Office of the High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, Economic and Social Council, 68/2002/Add.1, 20 May 2002. Guideline 7.

1.3 The European Union hard law on human trafficking: the focus on prosecution

The Charter of fundamental rights of the European Union³⁰ explicitly declares in article 5.3 that ‘trafficking in human beings is prohibited’. The engagement of the European Union in counter-trafficking, confirmed in the Treaty of the European Union in article 29,³¹ dates back to the nineties. Several Communications,³² Joint Actions,³³ and later on Decisions³⁴ on the issues have been adopted since that period. Particularly relevant in the framework of the European Union’s efforts to counteract human trafficking is the Council Framework Decision of 19 July 2002 on combating trafficking in human beings.³⁵ It consists of eleven articles, most of them dealing with the prosecution and with the criminalization of the conduct of trafficking. The definition of trafficking in this instrument differentiates from the United Nations Protocol in some respects. In fact, the European Union Document acknowledges pornography as a form of exploitation but does not apply to trafficking in human beings for the purpose of the removal of organs.³⁶ The main aim of the Framework Decision is to approximate and harmonize

³⁰ Charter of fundamental rights of the European Union, European Council, C364/01, 9 December 2000.

³¹ Treaty on The European Union, Consolidated text Official Journal C 321, 29 December (2006).

Title VI, Provisions on police and judicial cooperation in criminal matters. Art 29 States that : ‘Without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud (...)’.

³² Communication from the Commission to the Council and the European Parliament, For further actions in the fight against trafficking in women, COM 1998 726 final, 09/12/1998; Communication from the Commission to the Council and the European Parliament, Combating trafficking in human beings and combating the sexual exploitation of children and child pornography, 52000DC0854. COM(2000) 854 final, 21/12/2000; Communication from the Commission to the European Parliament and the Council - Fighting trafficking in human beings: an integrated approach and proposals for an action plan, 52005DC0514. COM(2005) 514 final, 18/10/2005.

³³ Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, Official Journal L 063, 04/03/1997 P. 0002 – 0006 (repealed by the Council Framework Decision of 19 July 2002 on combating trafficking in human beings).

³⁴ Council Decision of 29 May 2000 to combat child pornography on the Internet, Official Journal L 138, 09/06/2000 P. 0001 – 0004; Council Decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea, Official Journal L 030 , 01/02/2001 P. 0044.

³⁵ Council Framework Decision of 19 July 2002 on combating trafficking in human beings 2002/629/JHA Official Journal L 203, 1 January 2002.

³⁶ European Commission, 2004, p. 130.

the laws and regulations of Member States in the area of police and judicial cooperation in criminal matters and to define common provisions in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition. The only article dealing with trafficked persons is article 7 on protection of and the assistance to victims. It does not provide any kinds of measures or standards dealing with the protection of victims' human rights.³⁷ It only refers to children as particularly vulnerable victims calling on Member States to ensure appropriate assistance to their families. The Framework Decision takes into consideration neither the dimension of protection nor the dimension of prevention. Anne Gallagher argues in this respect that:

‘the retreat on victims’ rights was made possible, at least in part, by vague promises from the EU (...) that such matters would be dealt with in a subsequent instrument concerning the question of short-term State or residency for the victims of trafficking’.³⁸

However the Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities,³⁹ proves to be little human rights focused. In fact, its main aim, preventing illegal immigration and trafficking by providing victims with incentives to cooperate with the authorities in the detection and prosecutions of smugglers and traffickers, is far from protecting and promoting human rights. The measures set forth in the Directive only apply to those individuals who are supposed to give testimony and to cooperate. In addition the residence permit itself as well as work, vocational training and education are dependent both on the will of the trafficked person to cooperate in criminal proceedings as well as on ongoing of criminal investigations. For this reason it may be

³⁷ In particular Heli Askola refers that in absence of a framework for the protection of trafficked people, in many European countries ‘victims of trafficking (...) are typically first detained and then expelled as irregular migrants under the increasingly strict and ‘Europeanised’ migration policies of the Member States’. Askola, 2007, p. 209.

³⁸ Gallagher, 2006, p. 167.

³⁹ Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 2004/81/EC of 29 April 2004, Official Journal L 261 of 6 August 2004.

argued that the Directive constitutes a ‘minimum-standard version’ of the national legislations that are more advanced and protective.⁴⁰

The situation is rather peculiar as, on the one hand European Union countries are under common and even greater legal obligations than other State Parties to the Palermo Protocol on human trafficking with regard to criminal proceedings.⁴¹ On the other hand, these countries have adopted few common strategies in relation to the prevention of the phenomenon.⁴² This last element is considered one of the main shortcomings as it is evident that ‘penalization alone is not sufficient as a basis of a victim-sensitive anti-trafficking strategy’.⁴³

1.3.1. An overview of the European Union soft law on prevention: possibilities for further development

Provisions concerning both the prevention of the phenomenon as well as the protection of the victims are contained in several programmatic documents, among others, the Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women, recognizing the need to eradicate the root-causes of trafficking and urging the adoption of a human rights approach while preventing the phenomenon. The milestone documents concerning prevention and victims’ protection in the framework of the European Union are the Brussels Declaration on Preventing and Combating Trafficking in Human Beings⁴⁴ and the European Union Plan on best

40 It must be highlighted that Italy’s legislative framework gives victims the chance to obtain a residence permit for reasons of social protection (art. 18) which does not automatically imply that exploiters be denounced to the police though it truly assists victims, giving them the chance to reintegrate and stay on Italian territory for study or work reasons. Law 30 July 2002 N. 189, Modification to the legislation regarding migration and asylum, Official Journal, n. 199, 26 August 2002. This very measure is a model for the protection of the victim’s human rights and it is currently combined with the recent changes in Law 228/2003, art.13 that set out the institution of a special programme of assistance for the victims of offence, established by articles 600 and 601 of the penal code that guarantee, in a transitory way, adequate lodging conditions, subsistence expenses and healthcare in art. 14 and a series of measures for prevention which also involve cooperation with the countries entangled in trafficking. Source Degani, 2007, p.27.

41 According to Van Impe this is the result of the fact that ‘receiving industrial countries (...) attach a disproportionate importance to a set of narrow and ad hoc measures, focusing on short-term cures though border control and punitive measures’. Van Impe, 2000, p. 115.

42 Organization for Security and Cooperation in Europe, 2006, pp. 36-42. The study, conducted by the OSCE, is relevant, as all European Union member States are part of the OSCE.

43 International Organization for Migration, 2001, p. 53.

44 Final outcome of the 2002 European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st century. On 8 May 2003, the Council of the European Union adopted Conclusions concerning the Brussels Declaration. The European Parliament referred to it in a number of documents. For further information on the issue see: European Commission, 2004, p. 43.

practices, standards and procedures for combating and preventing trafficking in human beings – an integrated approach and proposals for an action plan.⁴⁵ The Brussels Declaration acknowledges that prevention is linked to several kinds of strategies, and it calls on States to focus on the root-causes approach, awareness-raising, research, training as well as administrative controls. In particular, the root-causes approach includes: women's empowerment, measures to improve governance, material support, social protection, employment opportunities and sustainable economic development. The Declaration also focuses on the need to examine ways to increase opportunities of legal, gainful and non-exploitative labour migration in order to reduce irregular migration. It is particularly important to underline that the Declaration urges States to conceive awareness raising as comprehensive multifaceted strategies and not as 'one-off activities in various locations'.

The other instrument, the European Union Plan on Best Practices, is more detailed and it contains a table of actions in order to guide States in the implementation of the contents of the document. The Plan acknowledges that prevention strategies should be made specific to vulnerable groups such as women and children. In particular, it calls on member States to promote gender specific prevention strategies on the one hand and to empower women on the other hand. It also urges States to act in order to eliminate the demand for all forms of exploitation, including domestic as well as sexual exploitation. It is particularly interesting to notice that the Action Plan goes beyond the dimension of awareness raising, it makes reference to 'anti-corruption and anti-poverty strategies (...) as an integral part of anti-trafficking strategies'. Such approach has been criticized as:

'EU anti-trafficking strategy at present evidences a clear trend towards a law enforcement agenda that is unsound in principle, and unworkable and repressive in practice. Inspired by a frail consensus over the need for more migration control, the current approach actually perpetuates rather than addresses the global inequalities, (...) focuses almost solely on repressive, reactive measures, whereas activists in the field have for long recognized that effective strategies (...) require a range of carefully considered long-term preventive and protective measures (...).'

⁴⁶

⁴⁵ EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, 2005/C 311/01, 9.12.2005.

⁴⁶ Askola, 2007, p. 213. On similar articles concerning the European Union's reactive approach see Spijkerboer, 2007, p. 127-139.

Notwithstanding the lack of binding preventive measures it is important not to forget that the European Union is the world biggest aid donor, concerning development cooperation and funding. The European Union's commitment to human trafficking has resulted in the creation of several programs such as AGIS, DAPHNE and STOP⁴⁷, aimed at preventing trafficking in human beings through research, investigation and networking.

1.4 The Council of Europe Convention on Action against Trafficking in Human Beings: towards a potential genuine human rights approach to prevention

Since the early 1990s, the Council of Europe, the regional organization devoted to the protection and to the promotion of human rights, has been involved in regional policy developments on human trafficking.⁴⁸ The Convention on Action against Trafficking in Human Beings⁴⁹ is based on the principle that 'trafficking in human beings represents a violation of human rights and an offence to the dignity and integrity of the person'.⁵⁰ It is a comprehensive agreement dealing in particular with the protection and the promotion of trafficked people's human rights, but also with the prevention and the prosecution of the crime. Its own scope is broader than the Palermo Protocol. In fact, it

47 AGIS was held until 2006. It was a framework programme to help police, the judiciary and professionals from the EU Member States and candidate countries to co-operate in criminal matters and in the fight against crime. DAPHNE is a Programme to combat violence against children, young people and women through research, investigation and material publication. STOP aim was to create a framework for training, information, study and exchange programs for persons responsible for combating trade in human beings and the sexual exploitation.

⁴⁸ Key Recommendations on the issue are Council of Europe Recommendation No. R (91) 11 of the Committee of Ministers to member States concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults, 9 September 1991. Council of Europe, Recommendation No. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation, 19 May 2000. Council of Europe, Recommendation N. R. (2001) 16 of the Committee of Ministers on the protection of children against sexual exploitation, 31 October 2001. Council of Europe, Recommendation of the Parliamentary Assembly N. 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States Recommendation 1450 (2000) on violence against women in Europe, 23 April 1997, among several others.

⁴⁹ The Convention entered into force on 1 February 2008. The first 16 States that have ratified the Convention are Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Malta, Moldova, Norway, Portugal, Romania. The Convention has been signed by 21 other Council of Europe member States: Andorra, Belgium, Finland, Germany, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, Luxembourg, Montenegro, Netherlands, Poland, San Marino, Serbia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom.

⁵⁰ Council of Europe, Recommendation N° R (2000) 11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation, 19 May 2000.

applies to all forms of human trafficking, whether national or transnational, whether or not connected with organized crime. Such further extension of the scope of application is very meaningful as it is consistent with the fact that in some contexts traffickers' structure may be very informal and not connected to the organized crime.

The Council of Europe Convention is considered the main treaty on the issue incorporating a genuine human rights approach as it introduces several provisions beyond criminalization, related to trafficked people's assistance and protection that, differently from the Palermo Protocol, are binding on member States.⁵¹ The Convention provides a very comprehensive framework, oriented to the primacy of victims' human rights,⁵² concerning a wide variety of issues such as the identification of the victims (article 10), the protection of trafficked people's private life (article 11), the assistance to victims (article 12), the recovery and reflection period (article 13), the residence permit (article 14), the compensation and legal redress (article 14) and the repatriation and return of victims (article 16). Member States are expected to implement the contents of such provisions and translate them into their national legislations, in addition the Convention also establishes an independent mechanism, the Group of experts against trafficking in human beings "GRETA", for monitoring the compliance of member States with the obligations contained in the instrument.⁵³

Concerning the dimension of prevention, the Convention refers a set of positive measures to stop future acts of trafficking from occurring through two types of interventions: namely decreasing potential victims' vulnerability and increasing the risk of traffickers' apprehension and prosecution.

⁵¹ On the way of incorporation of Council of Europe Conventions into domestic law, see Benoit- Rohmer, 2005, p. 122-123. See also Gallagher, 2006.

⁵² The contents of all the following dispositions on victims' protection and assistance, despite crucial, are not analyzed in detail, as they fall outside the scope of the present dissertation. It could be argued that the Council of Europe, consistently with its mandate, prioritizes victims' human security, trying to balance it with member States' political interests. For instance Article 14, on residence permit, shows that the Council of Europe reiterates and at the same time goes beyond the approach adopted by the European Union in Directive 2004/81/EC. It contemplates in fact the possibility for States to issue a renewable residence permit both in case the competent authority considers trafficked people's stay is necessary owing to their personal situation and in the case the competent authority considers their stay necessary for the purpose of investigation or criminal proceedings.

⁵³ In particular article 38.6 States that '(...) GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.

Article 5 calls on States to take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings. Paragraph 2 refers both to awareness raising as well as to social and economic initiatives and training programs targeted to persons vulnerable to trafficking and for professionals dealing with trafficking in human beings.⁵⁴ The explanatory Report underlines that:

‘Information, awareness-raising and education campaigns are important short-term prevention measures, particularly in the countries of origin. Social and economic initiatives tackle the underlying and structural causes of trafficking and require long-term investment. It is widely recognised that improvement of economic and social conditions in countries of origin and measures to deal with extreme poverty would be the most effective way of preventing trafficking. Among social and economic initiatives, improved training and more employment opportunities for people liable to be traffickers’ prime targets would undoubtedly help prevent trafficking in human beings’.⁵⁵

However, despite the recognition of the pivotal nature of prevention activities, some experts argue that the Convention keeps an orthodox approach with regard to prevention, in fact ‘general obligations are so broad and vague to seem meaningless in terms of compliance’.⁵⁶

⁵⁴ Council of Europe Explanatory Report, Committee of Ministers, CETS N° 197, 3 May 2005.

Note 103 underlines that prevention activities, complementary and interconnected can have short-, medium-, or long-term effect.

⁵⁵ *Ibidem*.

⁵⁶ Gallagher, 2006, p.184.

1.5 The Organization for Security and Cooperation in Europe and the fight against human trafficking

The Organization for Security and Cooperation in Europe (OSCE) has been dealing with the issue of human trafficking since the 90's.⁵⁷ The Organization's approach to security is multidimensional, multifaceted and comprehensive: in fact the military, the economic, the environmental and the human dimension of security are perceived as complementary and interlinked.⁵⁸ The main instrument dealing with the issue of human trafficking is the 'OSCE Action Plan to combat trafficking in human beings'⁵⁹ adopted in 2003.⁶⁰ The Action Plan, aimed at addressing the issue comprehensively, borrows the '3Ps' approach, incorporated in the Palermo Protocol. It deals with prosecution, protection and prevention. The nature of the provisions is non-binding. In fact, OSCE documents proclaim political commitments that serve as recommendations for State parties.⁶¹ The Action Plan aims at providing recommendations to participating States and relevant OSCE institutions, bodies and field operations in order to deal with political, economic, legal, law enforcement, educational and other aspects related to the problem.

Concerning the dimension of prevention, the Action Plan lists a great number of recommended actions that States are supposed to implement such as border measures, data collection and research, awareness-raising, legislation⁶² economic and social policies aimed at addressing the root-causes of human trafficking. This last recommended intervention, considered to be crucial, entails three distinct although complementary kinds of actions to be carried out in the country of origin, in the country

⁵⁷ The present dissertation acknowledges the important contribution of the OSCE in counter-trafficking, however it does not provide a comprehensive analysis of all measures taken by the Organization, both because of limited amount of space and because it falls out of the specific scope of the work.

⁵⁸ On the OSCE's comprehensive approach to security see among others Martin Estebanez, M.A., 1999, pp. 329-330, Zanghi, 2006, pp. 315-318; Nowak, 2003, p. 222.

⁵⁹ Organization for Security and Cooperation in Europe, OSCE Action Plan to combat trafficking in human beings, PC.DEC/557, 24 July 2003.

⁶⁰ *Ibidem*.

⁶¹ Buergenthal, 2007, p. 165. In particular the author underlines that 'non-compliance will not give rise to a cause of action but it could have very serious political repercussions'.

⁶² In particular it makes reference to the adoption or the review of laws, administrative controls and procedures relating to the licensing and operation of sectors of business that, according to intelligence, may be involved in trafficking, such as employment, tourist, au-pair, adoption or mail-order bride agencies, as well as hotels and escort services, Action Plan, paragraph 5.1.

of destination as well as in both countries. It recommends the adoption of measures to foster socio-economic stability, social inclusion, economic development, it calls on State parties to improve children access to educational and vocational opportunities, to enhance job opportunities for women by facilitating business opportunities for small and medium-sized enterprises. It is worth while underlying that among the recommendations concerning countries of destinations, one is particularly innovative as it relates to the concept of ‘invisibility’ of exploitation connected to trafficking. The document calls on States parties to enhance administrative controls as well as intelligence to make out those situations that could fall within the definition of human trafficking. On the other hand, the nature of the recommendations concerning the measures to be taken both in the countries of origin and in the countries of destination is both very general and comprehensive. In fact, beyond acknowledging the need to enhance social protection by guarantying equal employment and eliminating discrimination, the OSCE refers to a series of measures that are necessary to eradicate trafficked people’s vulnerability. They concern, among others, the development of programmes that could offer livelihood options such as basic education, literacy, communication and other skills, reduction of barriers to entrepreneurship; promotion of flexible financing and access to credit, including micro-credit with low interest. The OSCE far-seeing approach towards the prevention of human trafficking has resulted in the appointment of a Special Representative and Co-ordinator for Combating Trafficking in Human Beings whose mandate is aimed at supporting member States in the efforts against in counter-trafficking.⁶³

⁶³ Organization for Security and Cooperation in Europe, Decision N. 02/3 Combating Trafficking in Human Beings, MC.DEC/2/03, 2 December 2003. The Decision aims at creating a mechanism to provide assistance to member states to combat trafficking in human beings. Such mechanism consists in the appointment of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings as well as the creation of a Special Unit in the OSCE Secretariat.

Chapter 2

ERADICATING THE VULNERABILITY OF POTENTIAL VICTIMS OF TRAFFICKING: FROM TOP-DOWN TO BOTTOM-UP STRATEGIES

(...) effective prevention requires an understanding of the problem at its roots – whether it is in the source community or at the point of destination. In other words, prevention requires a ‘bottom up’ approach rather than the conventional ‘top down’.⁶⁴

2.1. Victimizing the victims? A top-down approach in counter-trafficking

Both the Palermo Protocol⁶⁵ as well as the Council of Europe Convention on Action against Trafficking in Human Beings define trafficked people as victims.⁶⁶ Many authors have emphasized that the anti-trafficking campaign had and still has strong moralistic undertones and has been instrumentalized by some conservative feminist coalitions whose aim is to abolish all forms of prostitution.⁶⁷ Critical authors suggest

⁶⁴ International Labour Office, p. 2.

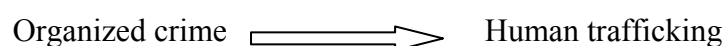
⁶⁵ Buckland argues that ‘(...) the victim-orientated approach of the Protocol is buttressed by the policy responses that it has, in part, engendered. The trafficking protocol is part of the United Nations Convention Against Transnational Organised Crime, and crime-fighters have overwhelmingly taken the lead in ‘rescuing’ women, ‘saving’ innocents, protecting ‘victims’, and, above all, in keeping them safe at home in the first place.’ The perspective put forward by the author is interesting as he suggests that States and the international community’s interest in human trafficking goes beyond the humanitarian approach and regards a series of other concerns, among others irregular migration flows.

⁶⁶ It is worthwhile underling that Article 4 (e) of the Council of Europe Convention defines the conception of victim for the first time as ‘any natural person who is subjected to trafficking in human beings as defined in this article’. Note 100 of the Council of Europe Explanatory Report States that ‘a victim is anyone subjected to a combination of elements (action – means – purpose) specified in Article 4 (a) of the Convention’.

⁶⁷ On the critics see Barman, 2003, pp. 37-86; see also Soderlund, 2005, pp. 64-87. On the issue Annette Lansink argues that ‘it is essential to caution against reifying the ‘cultural Other’ by locating trafficking within a paradigm of helpless women, victims of a variety of so-called third-world sexist and oppressive cultures/religions, in need to be ‘rescued’ by ‘enlightened’ western feminists, Lansink, 2003, p. 23.

that defining trafficked people as naïve and innocent victims contributes to strengthening the robust moral crusade⁶⁸ against sex business further politicizing the issue of human trafficking. As a result of this attitude, there has been an explosion of political and popular interest, reflected in the influx of funds devoted to anti-trafficking as well in the development of protective measures. However, some authors argue that the use of the concept of ‘victim’ to indicate trafficked people is not neutral, but is result of a social construction⁶⁹ that can have very harmful consequences. These experts do not question the fact that trafficked people experience human rights violations and are therefore victims of exploitation. However, they challenge the idea of top-down victimization⁷⁰ depicting traffickers as the only agents responsible for generating and fuelling the entire phenomenon,⁷¹ clouding the more complex nature of human trafficking.

The following figure shows that human trafficking is simplistically conceived as a consequence of organized crime:



Nevertheless, a comprehensive and serious analysis of the issue must go beyond this simplistic equation, deliberately ignoring the complexity of political, social, economic and personal motivations behind such a complex phenomenon.

⁶⁸ Weitzer, 2007, pp. 447-458. In particular the author refers to a series of claims that have been used to instrumentalize the issue of human trafficking in order to shift the debate towards the need for an abolitionist approach. These claims are: ‘Prostitution is evil by definition’, ‘Violence is omnipresent in prostitution and sex trafficking’, ‘Customers and traffickers are the personification of evil’, ‘Sex workers lack agency’, ‘Prostitution and sex trafficking are inextricably linked’, ‘The magnitude of both prostitution and sex trafficking is high and has greatly increased in recent years’, ‘Legalization would make the situation far worse than it is at present’.

⁶⁹ *Ibidem.*, pp.447-476.

⁷⁰ Top-down victimization is meant as the emphasis on the victim nature of trafficked people by institutional stakeholders as governments, specialized agencies, donors, and international and regional organizations. Such victimization expresses itself through the representation of trafficked people as slaves in the hands of traffickers.

⁷¹ On this issue Friesendorf reminds that: ‘Such representations present trafficking predominantly as an organized-crime problem, neglect the social and economic conditions that lead women to migrate’. Friesendorf, 2007, p. 381.

Heli Askola, among others reminds that:

‘They do not occur in a vacuum, potential victims of trafficking and smuggling are embedded in a range of social, economic conditions of marginality that can not be ignored, that drive the demand for smuggling, and the facility for traffickers to deceive women and adolescents.’⁷²

2.1.1 Reactive top-down strategies

The United Nations Special Rapporteur on trafficking in persons, especially women and children, expressed her concern few years ago relatively to the fact that human trafficking continues to be treated as mainly a “law and order” problem.⁷³ Despite the recommendations of international and regional organizations on the need to design and implement strategies consistent with the ‘three P’s approach, evidence shows that States’ efforts have been focused on prosecution. In fact, as reminded by Robert Bach:

‘The first action that government typically take when faced with a crises is to close their borders. States seem intent on gaining security by stopping the world from moving. Individuals, in contrast, often need to cross borders to overcome insecurities, reach safety, and find alternatives to crushing poverty and repression’.⁷⁴

Little attention has been devoted to the dimension of prevention. In fact, the ‘victimization approach’ has led to the proliferation of several reactive counter trafficking strategies whose aim is to prosecute and criminalize traffickers. As a result, repressive measures are relatively advanced.⁷⁵ In the last years transit and receiving

⁷² Askola, 2007, pp. 206-207. On this issue Buckland argues that ‘the labels victims and survivors of trafficking (...) have also had the effect of denying agency to trafficked persons, ignoring the economic reasons for which many choose to leave their homes, and transforming these persons (...) in mere objects of interventions by others’. Buckland, 2008, p. 42.

⁷³ United Nations Special Rapporteur on trafficking in persons especially women and children, 2004, p. 15.

⁷⁴ Bach, 2003, p. 227. Human trafficking is often considered just a problem of migration flows.

⁷⁵ Friesendorf, 2007, p. 391. However the author underlines that such measures are far from being perfect with regard to trafficked people’s human rights and human security. The ‘side-effect’ shows that in

countries have invested an incredible amount of resources in border security and capacity building in order to fight transnational organized crime, responsible for running both human trafficking and smuggling of migrants. Their efforts have consisted in the harmonization of criminal law⁷⁶ and in the enhancement of border control measures including a variety of interventions such as the increase of overseas immigration officers, the sophistication of documents and visas, the strengthening of carrier sanctions and the reinforcement of border patrol, both land and sea.⁷⁷ In particular, Buckland remarks that:

‘a principal objection to the use of border security as a counter-trafficking instrument is the fact that traffickers often use legitimate means to gain entry into States, providing trafficked persons with visas and passports as well as letters or funds to support claims of legitimate travel’.⁷⁸

Furthermore, experts agree that these strategies have failed to reach their main objective, namely eliminating illegal migration either resulting from smuggling of migrants or human trafficking.⁷⁹ This approach to counter trafficking has not proved to be successful as it is merely top-down and it does not take into the consideration the issue from a more comprehensive and bottom-up point of view.

2.2 Towards the need for a bottom-up understanding of human trafficking

Approaching the issue of human trafficking from a comprehensive and bottom-up perspective⁸⁰ would entail questioning some issues and some factors that are usually

several countries several women victims of trafficking have been arrested and/or deported for violating laws concerning migration or prostitution.

⁷⁶ On the issue of prosecution and criminalization see Chapter One.

⁷⁷ Benjamin B. Buckland underlines that carrier sanctions consist in ‘fines levied on public carriers, such as airlines and shipping companies, that provide passage to undocumented, or inappropriately documented migrants’, in addition he makes reference to ‘biometrics, machine-readable passports, and other anti-forgery techniques’. Buckland, 2008, p. 44.

⁷⁸ *Ibidem*, p. 45.

⁷⁹ *Ibidem*, p. 47. See also Askola, 2007, pp. 204-205.

⁸⁰ The expression ‘bottom up perspective’ is used in contraposition to the expression ‘top-down victimization’. A bottom-up perspective to human trafficking implies approaching the complexity of the phenomenon not only from the point of view of institutional stakeholders in transit and receiving States. It entails a broader view that deliberately attempts to investigate the issue from the angle of potential

given for granted. It implies both approaching the phenomenon from a more conscious perspective and acknowledging that organized crime,⁸¹ as already seen in precedent paragraphs, is not the only cause for human trafficking. It could be argued that traffickers facilitate and take advantage of existing phenomena such as the demand in the so-called 'North' or 'West' and the supply in the so-called 'the South' or 'the East'. Even if it could sound inadequate to use the terminology of economy, it is rather evident that man-made worldwide economic and social imbalances have led to the situation in which the recruitment and the transfer of human beings from their country of origin to be exploited in the countries of transit and destinations constitutes a business, I would say, a human flesh business.⁸² As a consequence, counter trafficking is far from being efficient if it deals uniquely with prosecution.⁸³ An integrated approach to human trafficking entails more than reactive strategies. The traditional approach to prevention must undergo a process of humanization, that is to say, it needs to go to the bottom and to shift attention from traffickers to potential victims. It is crucial to challenge the idea that trafficking is unavoidable as well as to investigate the reasons that make people vulnerable and therefore likely to be recruited. Considering this global and complex phenomenon as avoidable implies being aware that suffering and human rights violations, intrinsic to human trafficking are preventable, and therefore it is possible to act on them.

2.2.1 The changing nature of human trafficking, the consent of trafficked people and the abuse of a position of vulnerability

The issue of trafficked people's consent has raised incredible debate among experts. Legally, the Palermo Protocol deals with this issue stating that 'the consent of a victim of trafficking in persons to the intended exploitation (...) shall be irrelevant where any of the means set forth in subparagraph (a) have been used'.

victims of trafficking. Therefore it takes into consideration the interrelation of complex factors that make trafficked people vulnerable to this crime.

⁸¹ For a comprehensive analysis of the organization of human trafficking, the types of trafficking organizations, the organizational structure and the shift towards less articulated structure see Salt, 2000, pp. 41-45.

⁸² On the issue see Pentikainen, 1999, p. 12. The author argues that 'Trafficking in women and children is the phenomenon in which the status of human beings is relegated to being equated with the goods in the (sex) market conducted by men in charge of the business'.

⁸³ On this issue Friesendorf argues that 'History shows the inadequacy of coercive strategies against complex social problems'. Friesendorf, 2007, p. 398.

Such means include:

‘threat or use of force or other forms of coercion, of abduction, of deception, of abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control of another person for the purpose of exploitation’.⁸⁴

In the early 90’s, the general perception, supported also by evidence, showed that most of trafficked women were abducted, deceived and being subjected to violence, brutality and cruelty while being transported to transit and destination countries.⁸⁵

Nowadays, there is a growing consensus among experts that in many contexts trafficked people are not subjected to the same degree of brutality and violence in the phase of recruitment and transportation. In particular, they underline that trafficked people may be recruited through deception, namely with promises of good job offers abroad. In some other cases they may consent to be transported to another country being aware of the fact that they will be employed in sex business. In fact, they could perceive it as a migration strategy⁸⁶ to escape from vulnerability of their everyday life.⁸⁷

⁸⁴ United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25, 15 November 2000, article 3 (a).

⁸⁵ See for instance Arlacchi, 1999, pp. 65-114. The author refers to human trafficking for the purpose of sexual exploitation as ‘sexual slavery’ and he describes the degree of violence to which victims are exposed. It is crucial to underline that he refers to such phenomenon considering the decade of the nineties. The degree of brutality to which women were subjected, for instance in the case of Italy, was dependent on the nationality of traffickers. Evidence showed for instance that traffickers from the Balkans and also from Nigeria were responsible for murdering some trafficked girls. See on the issue Degani P., 2007, pp. 19-24.

⁸⁶ Critical authors such as Buckland reminds that ‘trafficking is less about innocent victims than it is about the realities of migration: the desire to migrate, the need to migrate, the imperative to migrate’. Buckland, 2008, p. 46. In particular it is argued that bans and restrictions on female migration force women migrants into even more vulnerable positions, increasing their ‘need of “brokers” to help them migrate clandestinely.’ Moreno Fontes Chammartin, p. 41. It is even argued that vulnerable individuals may perceive traffickers not as ‘predators, rapists, and kidnappers involved in organized crime and sexual slavery’, Wietzer, 2007, p. 452, but as people helping them to find an exit strategy to their everyday vulnerability.

⁸⁷ Such perception has been confirmed to the author in several contexts, however this does not imply that all trafficked people worldwide are partially aware of what is expecting them or they are consenting to be trafficked. The dimension of deception as well of threats may still be still present in several contexts and situations. The author has been conducting interviews with several stakeholders involved with human trafficking for the purpose of sexual exploitations. Such interviews have been realized from November 2006 to February 2007 in Italy in the framework of the DAPHNE Project: ‘Human Rights and Trafficking in Women and Young People. An Educational Toolkit for Teachers and Students’. She has

It is crucial to remind that according to article 3 (a) of the Palermo Protocol, the consent of the victim is nullified not only in presence of violence but also in case traffickers' abuse of potential trafficked person's vulnerability. Such concept, still not adequately investigated in the general debate on the issue, has been comprehensively defined by the Council of Europe in the Explanatory Report to the Convention as:

‘(...) abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.’⁸⁸

This comment proves to be key as it links the issue of socio-economic hardships and real and acceptable alternatives with the one of human trafficking.

The Council of Europe, in a subsequent comment deals with the relation between victims' consent and human rights violation in the country of destination:

‘the question of consent is not simple and it is not easy to determine where free will ends and constraint begins. In trafficking, some people do not know what is in store for them while others are perfectly aware that, for example, they will be engaging in prostitution. However, while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds’⁸⁹

Several reports deal with exploitation to whom trafficked people are submitted both in the countries of transit as well as in the countries of destination. In fact, trafficked

been Junior Expert of this project on behalf of the Italian Association ‘Diritti Umani – Sviluppo Umano’. She has been taken part to several international conferences on the topic such as ‘Quando si tratta di persone’ held in Verona, Italy, on 26-27 November 2006, and ‘Conferência Internacional Tráfico de Mulheres no Contexto da Exploração Sexual: Cenários Luso-Brasileiros’, held in Coimbra on 12-13 June 2008.

⁸⁸ Council of Europe, Explanatory Report to the Convention on Action against Trafficking in Human Beings, Committee of Ministers, CETS N° 197, 3 May 2005, note 83.

⁸⁹ *Ibidem.*, note 97.

women, who may have consented to be transferred to be employed in sex business, realize that their emancipator⁹⁰ decision turns into a nightmare. In fact, the initial deal is not being respected by the trafficker who, being in a position of domination and force, modifies the initial agreement in order to maximize the profits. Trafficked people find themselves bound to the traffickers for a variety of reasons: they are deprived of their documents, they discover they owe their exploiters an incredible amount of money, they fear police as they are taught that they will be imprisoned and sent back to their countries of origin. They are usually threatened both with psychological as well as physical violence, for this reason and they are far from being free as traffickers exercise control not only over their job but also on their life.⁹¹ The element of the abuse of socio-economic vulnerability as well as deception may be carefully considered as they are two of the means most frequently employed in the recruitment of individuals.

2.3 Focusing on potential victims' vulnerability

Shifting perspective and identifying socio-economic vulnerability as one of the main determinants of human trafficking implies going beyond the top-down conceptualization of prevention and taking measures to eradicate potential victims' vulnerability. Michele Clark remarks that:

‘in identifying abuse of a position of vulnerability as part of the definition, the Protocol allows us to consider that prevention includes both preventing a crime and reducing the conditions that make an individual vulnerable to trafficking.’⁹²

⁹⁰ In fact, it could be argued that from the point of view of a young woman experiencing vulnerability, abuse, social and economic hardship in her everyday life in the country of origin, accepting to go to first world countries to be employed in sex business could be considered a viable alternative to escape from everyday precariousness. I thank Professor José Gabriel Pereira Bastos for challenging my views and suggesting me other perspectives and other ways to interpret worldwide as well as local phenomena with particular reference to human trafficking. Interview with José Gabriel Pereira Bastos, Director of the ‘Research Centre in Migration and Ethnic Minorities’ University Nova de Lisboa, Lisbon, 22 April 2008.

⁹¹ These reports are national but they give a comprehensive overview of human trafficking and of the exploitation experienced by trafficked people. See on the case of Portugal De Sousa Santos, 2007, pp. 34-39; On the case of Italy see On the Road –Provincia di Pisa, 2005, pp. 10-16. Donadel, Martini, 2005, pp. 34-36; Magistrali, 2004, pp. 89-120.

⁹² Clark, 2008, p. 62.

Vulnerability is meant as:

‘a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities’.⁹³

It refers to the condition of defencelessness or exposure⁹⁴ specific of a determined context. Consistently with this conceptualization of vulnerability, the mission statement of the Global Initiative to Fight Human Trafficking⁹⁵ refers to the need to alleviate the factors that make people vulnerable to trafficking such as poverty, underdevelopment and lack of opportunities.⁹⁶

The focus on trafficked people’s vulnerability is important as it implies the enhancement of the human rights component of any anti-trafficking intervention. Counter trafficking activities refer both to strategies aimed at protecting individuals from external factors as well as empowerment strategies aimed at enabling individuals to protect themselves from the negative impact of the interrelation of external factors.⁹⁷ These two dimensions, the protection on the one hand, and the empowerment⁹⁸ on the other hand are at the basis of the concept of human security⁹⁹ as elaborated by the Commission on Human Security in 2003.¹⁰⁰

The following paragraphs attempt to stress the factors, usually insufficiently considered, that make women and young girls particularly vulnerable to human trafficking.

⁹³ *Ibidem*, p. 69.

⁹⁴ Chambers, 1995, p. 189.

⁹⁵ The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) was launched in March 2007 by the United Nations Office on Drugs and Crime (UNODC). The UNGIFT, born out of a renewed engagement by world leaders to counteract human trafficking, aims to mobilize State and non-State actors to eradicate human trafficking.

⁹⁶ UNGIFT mission Statement, available in the webpage of the organization www.ungift.org (consulted on 15 April 2008).

⁹⁷ See on the issue Clark, 2008, p. 68.

⁹⁸ On the issue of empowerment Annette Lansink argues that ‘strategies for the *empowerment* of women would, at a minimum, include recognising the nexus between gender, poverty and certain forms of migration, and the political contestation of law’s refusal to include these insights in any comprehensive way’. Lansink, 2003, p. 24.

⁹⁹ On the issue concerning the relation between human security and human trafficking see Clark, 2003.

¹⁰⁰ Commission on Human Security, 2003, pp. 10-12.

2.3.1 Human trafficking as a manifestation of gender discrimination and gendered violence

Most contemporary feminist scholars claim that the sources of discrimination against women are embedded in the economic, cultural and social structures of society, therefore they run much deeper than legal restraints and do not end when legal restraints are removed.¹⁰¹ If on the one hand legislation has perpetrated women's inferiority and subordination to men, on the other hand it has contributed to acknowledging that women have been the subjects of discrimination¹⁰² and violence and therefore they have been denied equal opportunities with regard to men.

The United Nations Declaration on the Elimination of Violence against Women acknowledges that human trafficking constitutes a manifestation of gendered based violence.¹⁰³ The preamble of the Declaration acknowledges a very important concept, as it states that:

‘violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men’¹⁰⁴

¹⁰¹ Tickner, 1992, p. 16.

¹⁰² The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, constitutes the key legal instrument concerning women's rights. Its impact is pivotal as it defines for the first time the concept of discrimination against women at article 1 as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, the enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’. Convention on the Elimination of All Forms of Discrimination against Women, General Assembly Resolution 34/180, 18 December 1979. It entered into force 3 September 1981, in accordance with article 27(1). In addition, the Convention brings an innovative lymph as it calls on States to take all appropriate temporary special measures to eliminate discrimination against women. However, the Convention does not provide neither a definition of violence, nor the women's entitlement to live free from violence.

¹⁰³ United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, 48/104, 20 December 1993. The Declaration States in article 2 (b) that: ‘Violence against women shall be understood to encompass (...) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution’.

¹⁰⁴ Preamble of the Declaration on the Elimination of Violence against Women.

Some years later, the Vienna Declaration and Platform for Action,¹⁰⁵ acknowledged for the first time that the human rights of women and girl-child constitute an inalienable, integral and indivisible part of universal human rights. In particular, the document adopted in Vienna refers to gender-based violence and to all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking.¹⁰⁶ They are defined as incompatible with the dignity and worth of the human person and for this reason States are recommended to eliminate them.¹⁰⁷

The relation between human trafficking and violence is also acknowledged in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as Convention of Belém do Pará.¹⁰⁸ The Convention represents a milestone with regard to the issue of violence against women.¹⁰⁹

Also the Beijing Declaration and Program for Action acknowledges human trafficking as a form of gender-based violence and it calls on States to eliminate trafficking in women and to assist victims of violence due to prostitution and trafficking.¹¹⁰

¹⁰⁵ Vienna Declaration, World Conference on Human Rights, U.N. Doc. A/CONF.157/24, Vienna, 14 - 25 June 1993.

¹⁰⁶ International trafficking is perceived as a manifestation of gender-based violence, however it is interesting to note that human trafficking also occurs within the boundaries of a given State.

¹⁰⁷ Vienna Declaration and Programme of Action, paragraph 18.

¹⁰⁸ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, General Assembly of the Organization of American States, 9 June 1994. It entered into force one year later. Article 2 (b) States that 'Violence against women shall be understood to include physical, sexual and psychological violence that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution (...)'.
¹⁰⁹ In particular article 5 acknowledges the entitlement of every woman to the free and the full exercise of her civil, political, economic, social and cultural rights, affirming that violence against women prevents and nullifies the exercise of these rights. Article 6 represents a crucial step forward as it acknowledges the rights of every woman to be free from violence. For a comprehensive analysis of the Convention see Degani, 2005, pp. 145-146.

¹¹⁰ Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995). Strategic Objective D3. The objective of eliminating human trafficking is comprehensively formulated in the Platform for Action. Merja Pentikainen remarks that the Beijing Declaration and Platform for Action give a comprehensive definition of violence, including battering, sexual abuse and harassment, rape, sexual mutilation, trafficking in women and forced prostitution. Pentikainen, 1999, pp. 11-12. On the main achievements of the Beijing conference see Raymond, 1998, pp. 1-9.

2.3.2 Targeting the potential victims: acknowledging vulnerability as gendered

The precondition to design any preventive strategies is to identify the targeted recipients and to plan interventions according to the specific characteristics of beneficiaries.¹¹¹ Conditions of vulnerability are usually the results of political, social, cultural or economic practices and policies that fail to ensure equal access and protection to all members of a society.¹¹² It is manifest that women experience multiple process of discrimination, marginalization and exclusion stemming from gendered human insecurity in their everyday life.¹¹³ In fact, both the nature of threats to freedom from want and to freedom from fear, as well as the way these are experienced by men and women, differ. According to Michele Clark, among others:

‘women are vulnerable to trafficking because they are frequently excluded from mainstream economic and social systems, such as employment, higher education, legal as well as political parity. They are often the hidden victims of war and conflicts and this vulnerability extends to their status as displaced persons or refugees. It is also arguably exacerbated by their ‘relative unequal’ (secondary) status in the family and society more generally’.¹¹⁴

¹¹¹ Clark, 2008, p. 68.

¹¹² *Ibidem*, p. 68.

¹¹³ See on the issue Hoogensen, Stuvoy, 2006, pp 207-228. See also Tickner, 1992, pp. 29-30. See also Alison, 2004, pp. 447-463. Heidi Hudson warns against the danger of the term ‘human’, because although it claims for gender-neutrality, inclusiveness and universality, it hides several connotations, first of all, it is expression of masculinity. She adds that ‘the security needs of western women in the developed world are different to the extent that no global sisterhood can be assumed [...] neither Africa as a continent nor African women as an identity group represent a monolithic category of analysis’, Hudson, 2005, pp. 155-174. On the topic see also Degani, 2005.

¹¹⁴ Clark, 2008, p. 72.

2.3.3 Acknowledging access to human mobility as gendered

It is also important to investigate the feminization of migration. The International Organization for Migration defines feminization of migration as ‘the growing participation of women in migration’.¹¹⁵ It is estimated that almost half of migrants worldwide are women.¹¹⁶ Experts tend to show that the main reason behind the increasing participation of women may be found in the feminization of poverty¹¹⁷ as well as the vulnerability experienced by women. It is estimated that there are about 191 million migrants worldwide¹¹⁸ while an amount between 700.000 women and children are being trafficked worldwide.¹¹⁹ It is important to underline that gender plays a crucial role in determining what kind of migration project can be chosen. If we refer to irregular migration, that is to say, to the strategies sought to deceive border controls and stricter immigration laws, it is rather evident that irregular potential migrants have different options on the basis of gender. As Zygmunt Bauman underlines, access to global mobility is becoming one of the most important factors in social stratification.¹²⁰

Ruba Salih argues on the issue that:

‘the conditions for moving transnationally are not always available to women, or are limited or framed within a set of normative and culturally gendered rules’.¹²¹

The difference in the access to global human mobility for men and women has resulted in the fact that, as already seen in the course of the dissertation, potential female migrants may lack autonomy to carry out a migration project and may believe to a stranger or an acquaintance’s false promises in order to realize it.

¹¹⁵ International Organization for Migration, 2005, p. 459.

¹¹⁶ *Ibidem.*, p. 13.

¹¹⁷ On such concepts see Shearer Demir, 2003, pp. 7-9.

¹¹⁸ See International Organization for Migration Global Estimates and Trends available at <http://www.iom.int/jahia/Jahia/pid/254> (consulted on 24 May 2008).

¹¹⁹ US Department of State, 2004. However such data do not distinguish between trafficking for the purpose of sexual and labour exploitation.

¹²⁰ Bauman, 1998, p.87.

¹²¹ Salih, 2004.

Both the International Organization for Migration as well as the United Nations Office of the High Commissioner on Human Rights have urged States to consider increasing legal and not exploitative migration opportunities. However, it is manifest that the decision rests in the hands of reluctant receiving States.

2.4 Prevention strategies

The following paragraphs aim at investigating the main prevention strategies carried out in the framework of counter trafficking. Such activities may be funded by international, regional organizations and funds, as well as governments and may be implemented by specialized agencies, research institutes and non-governmental organizations both in the countries of origin and in the countries of destination.

2.4.1 Awareness raising campaigns in the countries of origin

According to the United Nations Office on Drug and Crime (UNODC), the purpose of raising public awareness is to mobilize popular concern about the risk of falling prey to criminals and to inform about the social and human costs of trafficking in persons.¹²² In the last years, prevention campaigns supported by regional, international organizations and governments in cooperation with NGOs have flourished.¹²³ The campaigns can be realized through different means such as posters, videos or distribution of informative material. It could be argued that awareness raising campaigns, because of their very nature, may be defined as bottom-up anti-trafficking strategies as they target potential victims of trafficking. However, it is crucial to remark that, in order to be bottom-up, awareness raising campaigns need to meet other criteria. They should not constitute an isolated event and should be embedded in a comprehensive strategy complementary to advocacy for human rights, gender equality, self-empowerment and human dignity. In particular, experts on the issue argue that they should:

¹²² United Nations Office on Drug and Crime, 2006, p. 175.

¹²³ It is particularly interesting to note that also the world-wide known pop-star Ricky Martin has established a Foundation, the Ricky Martin Foundation, dealing with trafficking prevention campaigns. See <http://www.rickymartinfoundation.org/> (consulted on 15 March 2008).

‘(...) be educative, convey empowering and gender-sensitive messages, with aspects of interactivity, and be based on the assessment of the interests of the respective target groups.’¹²⁴

However, according to some authors,¹²⁵ most of awareness raising campaigns are neither so comprehensive and multi-faced, nor targeted on potential victims. These concepts are explored in the following paragraph.

2.4.2 Critical views: sensitization campaigns as new strategy of delocalized top-down migration control

Céline Nieuwenhuys and Antoine Pécoud argue that anti-trafficking information campaigns represent a new form of delocalized migration control that stems from the shortcomings of traditional border surveillance.¹²⁶ From this point of view, awareness raising campaigns are meant to reinforce ineffective top-down reactive strategies. In fact, they support the idea that awareness raising activities, meant to discourage migrants from leaving, are far from being motivated by humanitarian concern: they resemble more anti-immigration strategies aimed at preventing potential migrants from crossing borders.

The authors also question the effectiveness of awareness raising activities in preventing vulnerable people from falling into victims of trafficking and underline their main shortcomings. They argue that informative preventive campaigns are based on three very fragile and too general assumptions: first, migrants lack information on migration; second, their behaviour is based on available information; and third, information on migration is dark enough to discourage them from leaving. They state that:

‘it is not really the objective knowledge that counts but rather migrants’ interpretation of it. Because this interpretation is grounded in a social context characterized by socioeconomic dead ends and exposure to signs of a better life, it becomes difficult to modify what migrants want—or need—to believe.’¹²⁷

¹²⁴ European Commission, 2004, p. 91.

¹²⁵ See the following paragraph.

¹²⁶ Nieuwenhuys, Pécoud, 2007, p. 1691.

¹²⁷ *Ibidem.*, p. 1686.

In particular, another author argues that information campaigns encourage people ‘to stay at home’ conveying a negative image of migration as a harmful and threatening process, as if the human rights violations and exploitation that characterize trafficking never took place in countries of origin.¹²⁸ Barbara Limanowska argues that campaigns can be counterproductive: in fact, some campaigns in South-eastern Europe have been perceived as anti-migration campaigns that instrumentalize trafficking in order to reduce migration to the EU.¹²⁹

Nieuwenhuys and Pécoud conclude by stating that prevention must be perceived in a broader sense in order to provide alternatives to the stuck situation in which they find themselves. In fact, it is not possible to consider the issue of human trafficking without dealing with migration and with the desire or the need of people to carry out a migratory process.¹³⁰

¹²⁸ Sharma, 2003, p. 21.

¹²⁹ Limanowska, 2005, pp. 21–22.

¹³⁰ On this topic Limanowska argues that ‘Prevention has not evolved much beyond awareness-raising campaigns informing people about trafficking, despite doubts over the effectiveness of awareness campaigns.’ *Ibidem*.

2.4.3 Awareness raising campaigns in the country of destination: addressing the demand

Human trafficking is driven by the unabated demand for cheap labour and sexual services mainly in the so-called first world. Prevention activities are directed to clients, to potential customers¹³¹ as well as to members of the different communities where victims could be found. Activities mainly consist in informing about the exploitation experienced by trafficked people. Two main considerations can be put forward in this respect. First, one of the main problems behind these prevention activities concerns the fact that clients are indirectly asked, when buying a sexual service, to distinguish between sex workers who exercise their profession voluntarily and girls that may be trafficked.

However, this reasoning could be rather artificial and demanding on clients that, despite isolated examples in Europe,¹³² may not be so willing both to pay attention to the free or the forced nature of the service purchased as well as to 'save' young women from exploiters. Second, such kinds of activities have to do with the fact that demand-oriented awareness campaigns are inextricably linked to prostitution policies in the determined country in fact the debate over prostitution is an ideological minefield. European countries have adopted different approaches with regard to prostitution such as abolitionism,¹³³ new-abolitionism,¹³⁴ prohibitionism¹³⁵ and regulationism¹³⁶ and it

¹³¹ For instance in the framework of the funding made available by the European Commission through the program DAPHNE, several awareness raising projects in countries of destination have been realized. See for instance the Project Human Rights and Trafficking in Women and Young People in Europe Educational Toolkit for Teachers and Students, aimed at informing high school students on the issue of human trafficking. The rationale behind the Project is that they could be potential customers.

¹³² In Italy for instance, it is well known the case of many customers that turned into 'resource clients' helping trafficked girls to escape from the chains of exploitation. These customers together with some trafficked girls from Nigeria have founded 'La ragazza di Benin City' (Benin City girl). The aim of the association is to give voice to the voiceless, to women that have been trafficked and have experienced any kind of abuse and violence. See <http://www.inafrica.it/benincity/associazione.html> (consulted on 15 May 2008). In particular, this association also deals with 'self-reciprocal help' for customers who may willing not to become dependent on prostitution.

¹³³ According to the abolitionist approach indoor and outdoor prostitution are neither prohibited nor regulated. States tolerate them and do not intervene, however the condition is that there must be no exploitation and the relations have to occur between consenting adults. Abolitionism is present in Poland, Czech Republic, Portugal and Slovakia. See Transcrime, 2005, pp. 64-78.

¹³⁴ The new-abolitionist approach prohibits in-door prostitution in the case it is practised in brothels. States tolerate outdoor prostitution in absence of exploitation. Neo-abolitionism is present in Italy, Belgium, Cyprus, Denmark, Estonia, Finland, France and Luxemburg. *Ibidem.*, pp. 79-93.

¹³⁵ According to this model both outdoor and indoor prostitution are prohibited. This model is present in Ireland, Lithuania, Malta and Sweden. *Ibidem.*, pp. 94-104.

rather obvious that awareness raising campaigns directed to clients will be influenced by the degree of *manoeuvre* that is allowed by national policies on sex-business.

2.4.4 Eradicating potential victims' vulnerability

Vulnerability implies lack of freedom, lack of autonomy over one's life. Being vulnerable to traffickers or consenting to be trafficked to escape from everyday economic and social hardship is a form of threat to freedom. Development is mainly about economic indicators, human development is about 'widening people's choice and the level of their achieved well-being'.¹³⁷ In Amartya Sen's words 'human centred development implies expanding the real freedoms that people enjoy'.¹³⁸

Widening people's choice entails putting individuals in the conditions to exercise control over their own lives. It implies enabling them to choose migration as an option and not as a survival or as an exit strategy. Existing prevention strategies, namely awareness raising campaigns, are useful tools to inform potential victims about the risks associated to human mobility, however it is argued that they are not enough, in fact they do not provide potential victims with any viable alternatives. They need to be complemented by a series of interventions aimed at investing in people's human development and human security.

As already seen in Chapter One, the Palermo Protocol conceives prevention in a very broad way. In particular, paragraph 4 calls on States to 'take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty underdevelopment and lack of equal opportunity'. Also the UNHCHR, in its Guiding Principles, calls on States to offer livelihood opportunities including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups. They make reference to the improvement of children's access to educational opportunities, to the need to increase the level of school attendance, in particular by girl children.

¹³⁶ According to regulationism States regulate both outdoor and indoor prostitution and therefore it is a legal activity if exercised according to the rules. Such model is present in Austria, Germany, Greece, Latvia, the Netherlands, United Kingdom, Hungary. *Ibidem.*, pp. 105- 116.

¹³⁷ United Nations Development Program, 1990, p. 1.

¹³⁸ Sen, 1999.

However, experts from the International Labour Organization underline that the root causes of trafficking and irregular migration are hardly addressed, few efforts are dedicated to the improvement of living conditions in migrants' regions of origin'.¹³⁹ Experts also remark that, in the realm of prevention of trafficking in human beings, it is easier to obtain funding for awareness raising programmes than for long term prevention strategies.¹⁴⁰

2.4.5 Bottom-up development: getting to the vulnerable. The need for human-centred public policies and development cooperation

It is argued that public policies by national governments as well as development cooperation¹⁴¹ are the means through which individuals can have access to basic needs and services. However, it is crucial to underline two aspects. First, it is notorious that public policies in several countries are ineffective with particular regard to service delivery.

Second, several development cooperation interventions are far from being targeted to recipients' needs and they are rather oriented to meet donors' interests. For this reason they are top-down, in particular, in the case of bilateral cooperation.¹⁴² Interventions should be multi-faced and entail the improvement of educational, medical, economical, social infrastructures as well as the creation of viable employment opportunities, particularly for women.¹⁴³

These kinds of measures, in order to be effective, should be targeted to vulnerable people and in particular they should reach the most marginalized, excluded and likely to be trafficked. In fact, socio-economic indicators may improve at national level but people could still feel vulnerable, excluded, marginalized and hopeless in the short, medium and long run. As revealed by a study conducted by the World Bank, 'Voices of the Poor',¹⁴⁴ released in 2000, the perception of poverty as well as insecurity is very subjective and it varies according gender, nationality, urban or rural context, among

¹³⁹ Taran, Moreno-Fontes Chammartin, 2003.

¹⁴⁰ Clark, 2008, p. 64.

¹⁴¹ Development cooperation can be regional, international, governmental or non-governmental, bilateral or multilateral. For further details see Raimondi, Antonelli, 2005.

¹⁴² *Ibidem.*, p. 91-99.

¹⁴³ Frisendorf, 2007, p.389.

¹⁴⁴ It consists of three books: *Voices of the poor: can anyone hear us?*, Oxford University Press, New York, 2000; World Bank, *Voices of the poor: crying out for change*, Oxford University Press, New York, 2000 and *Voices of the poor: from many lands*, Oxford University Press, New York, 2002.

other factors. Besides, economic and social benefits must be perceived by target recipients not as a mere top-down interventions lasting a determined amount of time. For this very reason it is argued that development cooperation projects should be bottom-up, that is to say, they should be participatory, involve the recipients, not only in the implementation phase, but also in the determination of the ‘problem tree’ and of the ‘objective tree’.¹⁴⁵ Ownership constitutes another crucial element with reference to development cooperation, in fact in order to feel opportunities for development and improvement, people must be involved in activities and must feel active participants. Effective counter-trafficking strategies, aimed at reducing people’s vulnerability, should provide vulnerable individuals with viable alternatives. In the framework of economic sphere, income generation projects as well as micro-finance initiatives¹⁴⁶ should be promoted in order to build a sense of community and empowerment at home. It is in fact pivotal to make the difference in the lives of ordinary people. They should perceive that their own vulnerability is decreasing.¹⁴⁷ It is therefore argued that such projects may be successful if they are complemented by a series of multi-faced interventions aimed at investing in individuals’ human development.

¹⁴⁵ Raimondi, Antonelli, 2005, p. 91-99.

¹⁴⁶ On the main principles governing micro-credit see http://collab2.cgap.org/gm/document-1.9.2747/KeyPrincMicrofinance_CG_eng.pdf (consulted on 13 June 2008). See also <http://www.grameen-info.org/mcredit/> (consulted on 25 May 2008). The significance of the term micro credit has been imputed to mean everything to everybody. Micro credit programmes extend small loans to poor people for self-employment projects that generate income, allowing them to care for themselves and their families, making them the first actors responsible for the ongoing of the activity as well for the restitution of the loan. See on the relation between micro-credit and human trafficking: United Nations Population Fund, 2008. This specific case deals with Tajikistan.

¹⁴⁷ Office of the United Nations High Commissioner for Human Rights, 2006, p. 17.

Chapter 3

PORTUGAL'S PREVENTION STRATEGIES ON HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION FROM BRAZIL: TOWARDS A BOTTOM-UP APPROACH?

3.1 Brazil as a country of origin. Individuals' socio-economic vulnerability as the main cause of human trafficking

Brazil is a major country of origin for trafficked women and children.¹⁴⁸ According to several sources, this phenomenon stems from a variety of factors mainly related to socio-economic issues.¹⁴⁹ These could be perceived as threats to freedom from want experienced by individuals and their consequent need and will to incorporate better living standards.

According to a study on human trafficking carried out in Brazil,¹⁵⁰ there is a proportional relation between the socio-economic vulnerability experienced by some segments of the population and their likelihood to be recruited and then be sexually exploited by traffickers.

Usually vulnerable people are recruited with the promise of job offers within the country, the continent or abroad. The recruiters are both informal networks of

¹⁴⁸ UNODC, 2006, p. 18. However, it is notorious that Brazil not only 'exports' people to be employed in the sex business but it also 'imports' foreigner tourists willing to purchase cheap and exotic sexual services. The phenomenon of sexual tourism with minors is particularly worrying in the country.

¹⁴⁹ Brazil human development index ranks 70 out of 177. In specific, life expectancy at birth is 71,7, the adult literacy rate is 88,6 and the GDP per capita is 8, 402 US\$. Source United Nations Development Program Statistics, available at http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_BRA.html. (consulted on 22 June 2008). Despite the fact that Brazil Human Development Index is not so low, the country presents multidimensional poverty and huge problems of social inequality as well as delivery of basic services. Source United Nations Development Program, 2005, p. 44. See also, among others, Ângelo, 2007, pp. 27-34. In particular Boaventura de Sousa Santos, 'Globalization, Neo-Liberalism and Human Rights', unpublished presentation at the international conference ' Trafficking in women for sexual exploitation: Portuguese-Brazilian scenario', Coimbra, 12 June 2008. This thesis has been confirmed also by several interviews realized by the author with privileged informers.

¹⁵⁰ Leal and Leal, 2002, p. 56-57.

traffickers,¹⁵¹ such as acquaintances,¹⁵² as well as travel agencies.¹⁵³ Potential victims are usually young girls and women between eighteen and twenty-five years old. Some of them may have children and may believe in the traffickers' promise, leaving their country in order to earn some money to send back to their families.¹⁵⁴

People who are trafficked both internally and externally come mainly from the North-East area,¹⁵⁵ the poorest zone of Brazil, from the region of Goiás, as well as Recife.¹⁵⁶ Internally, it is particularly important to stress that besides young women,¹⁵⁷ male adolescents are recruited in the North East with promises of job offers. They are actually transported to Rio de Janeiro and São Paulo, forced to take hormones and then 'exported' abroad as transsexuals.¹⁵⁸ Within the continent, it is very widespread the trafficking of young girls to Venezuela as well as to other South American and North American countries to be sexually exploited.¹⁵⁹ Internationally, it is estimated that Brazilians from Rio de Janeiro, Pernambuco, Rio Grande do Sul, Vitória, Salvador, Recife and Fortaleza as well as from Goiás are trafficked mainly to Spain, the Netherlands, Italy and Portugal.¹⁶⁰

¹⁵¹ Téchio, 2006, p. 9.

¹⁵² They are usually non structural and they are composed of few people. Their level of organization is not comparable with criminal networks from Eastern Europe. See on Eastern Europe criminal networks Degani, 2007, pp. 21-22.

¹⁵³ Information received in interview with João Peixoto, Professor, Research Centre in Economic and Organizational Sociology, Technical University of Lisbon, 24 April 2008, Lisbon. Information confirmed in interview with Catarina Sabino, academic researcher on migration area, Research Centre in Economic and Organizational Sociology, Technical University of Lisbon, 24 April 2008, Lisbon. Nowadays several travel agencies, selling a 'package' to Europe, are located, among others, in the region of Goiás, the main area of provenience of victims of human trafficking.

¹⁵⁴ Information received in interviews with Dr. Christiane Coelho, Counsel, International Organization for Migration Lisbon, Lisbon, 20 June 2008.

¹⁵⁵ According to the Human Development Report on Brazil, published in 2005, the Northern East region concentrated in 2001 more than half of the population (57,4%) living below poverty line in Brazil. UNDP, 2005, p. 62.

¹⁵⁶ Sabino, 2005, p.233.

¹⁵⁷ On the issue of internal trafficking see also Leal and Leal, 2007, pp. 97-106; see on the case of truck drivers and the sexual exploitation of adolescents Mesquisa Pedrosa Padilha and Cerqueira-Santos, 2007, pp. 137- 146.

¹⁵⁸ Mário Ângelo, 'Challenges to the production of knowledge on the issue: perspectives, concepts and indicators', unpublished presentation at the international conference 'Trafficking in women for sexual exploitation: Portuguese-Brazilian scenario', Coimbra, 12 June 2008.

¹⁵⁹ Alves Pimentel, Oliveira, 2007, pp. 59-74.

¹⁶⁰ De Sousa Santos and others, 2007, p. 95. See also Organização Internacional do Trabalho, 2006, p. 59.

3.1.1 The consent of trafficked people: perception among experts

Several studies conducted most by Portuguese experts on the issue argue that most Brazilians trafficked abroad, in particular to Portugal, may be deceived with false promises of good job offers, such as receptionists or waiters. Many of them, in particular girls, may be aware that they are going to be employed in night clubs as waiters or dancers, however as some interviewees reported, they do not imagine that they will be forced to have any sexual relations with the clients.¹⁶¹ Other studies report that girls may be aware that they are going to be employed in the sex industry once arrived in the country of destination.¹⁶² Some authors argue that some girls may initially consent to work as prostitutes as they may conceive it as a ‘emancipator strategy’¹⁶³ as well as a ‘migration strategy’¹⁶⁴ to escape from every day socio-economic vulnerability and human insecurity. However, once arrived in the country of destination, they find themselves in a situation of exploitation.¹⁶⁵

With regard to the means employed in the phase of recruitment and transportation of Brazilian women, reports highlight the lack of any use of force, violence or threat of use of force; in fact, traffickers do not need to employ these means, at least in this first phase, given the fact that they are dealing with consenting people.¹⁶⁶ At first sight it could be argued that, because of the fact that girls may be aware of the profession they are going to practise, this situation resembles more the conduct of smuggling of migrants characterized by subsequent exploitation of prostitution rather than human trafficking.¹⁶⁷ However, it is important to make a step forward and to underline that, as already

¹⁶¹ Information received in interviews with Dr. Christiane Coelho, Counsel, International Organization for Migration Lisbon, Lisbon, 20 June 2008.

¹⁶² De Sousa Santos and others, 2007, p.118. Sabino, 2005, pp. 233-234. This perception is confirmed to Dr. Sabino by interviews conducted with privileged informers such as NGOs in Portugal. However, she underlines that the perception of religious associations is quite different, they argue that girls are naïve and do not imagine that they will work as prostitutes.

¹⁶³ Boaventura de Sousa Santos, ‘Globalization, Neo-Liberalism and Human Rights’, unpublished presentation at the international conference ‘ Trafficking in women for sexual exploitation: Portuguese-Brazilian scenario’, Coimbra, 12 June 2008.

¹⁶⁴ De Sousa Santos, 2007, p. 116. This perception has been confirmed to the authors of the Report by interviews with several stakeholders.

¹⁶⁵ *Ibidem*.

¹⁶⁶ See on the issue Sabino, 2005, pp. 228-232. See also De Sousa Santos and others, 2007, 123-124.

¹⁶⁷ Sabino, 2005, pp. 223-226.

analyzed in Chapter Two, trafficked people's consent is subjected to annulment according to the main international legal instruments on the issue, not only by visible and concrete exercise of force and violence on victims,¹⁶⁸ but also by other factors, such the abuse of a socio-economic as well as psychological vulnerability.¹⁶⁹

As already analyzed in the previous paragraph, most of girls and women trafficked from Brazil to Portugal come from the North Eastern region, an area faced with serious socio-economic problems as well as with very precarious living conditions. It is argued that the element of the abuse of individuals' socio-economic vulnerability could be one of the reasons why, despite several preventive actions, aimed at informing young Brazilians about the risks of exploitation and human rights violations intrinsic in human trafficking, more and more vulnerable women still believe in the traffickers' promises and decide to leave the country. Besides believing that they will be able to exercise control over the whole situation and therefore 'it will not happen to them',¹⁷⁰ they may consider migrating as an exit or a survival strategy.¹⁷¹ From their point of view, the remote eventuality of experiencing some troubles in 'known-unknown'¹⁷² Western European countries could be assessed as less severe than keeping on living in an hopeless, hard and known context. Consenting to be trafficked does not entail being willing to submit to any kind of exploitation by traffickers once arrived in the country of destination.¹⁷³ However,

¹⁶⁸ As well as threats.

¹⁶⁹ See paragraph 2.2.1.

¹⁷⁰ I thank Dr. David Gakunzi as he challenged my views: he tough me the importance to put oneself in vulnerable people's shoes in order to get near to them, trying to start from their views and their aspirations. Interview with David Gakunzi, Head of Policy Dialogue Unit, North South Centre Council of Europe, Lisbon, 9 March 2008.

¹⁷¹ This perception has been confirmed by interviews with several privileged informers. See the list of interviewees in the bibliography. If trafficking is perceived as a migration strategy it is crucial to underline that, in many parts of the world, migration turns into a survival strategy. Global Commission on International Migration 2005, p. 58.

¹⁷² The expression 'known-unknown' refers to the fact that, on the one hand Western Europe countries are known because they are identified by potential trafficked people both with the positive images transmitted by the media and with the hopeful stories told by nationals living in those countries. Even if there is not relevant literature on the topic, there is a growing perception that members of transnational communities abroad tend to omit the failures relative to their migratory process and either they depict their life in Western Europe as very positive or their experience is perceived as very successful by the non-migrants because of the economic remittances they send. These perceptions have been confirmed also by interviews with privileged informers. On the other hand, Western European countries represent the 'unknown' and therefore they are associated with hope and possibility to realize one's potential and one's dreams.

¹⁷³ Council of Europe, Explanatory Report to the Convention on Action against Trafficking in Human Beings, Committee of Ministers, CETS N° 197, 3 May 2005, note 97.

abuse is very likely to happen and the initial dream to leave aside socio-economic vulnerability turns into a process of further erosion of human security.

3.1.2 The exploitative scenario in Portugal

The migration scenario in Portugal is extremely interesting: most of migrants come from African Countries of Portuguese Official Language (PALOP) as well as from Brazil. Brazilians and Cape-Verdeans constitute the two largest migration groups in the country.¹⁷⁴

International reports, such as the one published by the UNODC¹⁷⁵ in 2006, state that Portugal is a destination country of medium incidence, concerning the presence of trafficked people. Because of the hidden nature of the phenomenon, it is particularly difficult to identify the number of trafficked people in the country.¹⁷⁶

Current reports on trafficking in the country show that most of trafficked people come from Brazil, followed by girls coming from Ukraine and Romania. There is also evidence of trafficked people coming from the African continent¹⁷⁷ as well as from Asia.¹⁷⁸ However their number is not relevant if compared with Brazilians.

¹⁷⁴ It is estimated that nowadays there are between 100.000 and 160.000 Brazilians in Portugal, the official number amount to 69.000. Source: interview with Dr. Christiane Coelho, Counsel, International Organization for Migration Lisbon, Lisbon, 20 June 2008. See on the immigration scenario in Portugal: SOS Racismo, 2002. There are several studies concerning Brazilian immigration to Portugal. Alexandra Figueiredo underlines in her study that 'After 1974, Portugal has received a significant number of Brazilian immigrants, namely the opponents to the Brazilian dictator regime. The migration flow that was started then has assumed a regular and continuous form, which places this community as the second one in terms of number of legal residents. In general, the immigrants arriving in that period have average and higher professional qualifications and occupy posts in the sector of specialised services'. Figueiredo, 2002, p. 4. The second flow of Brazilian immigration to Portugal dates back to the early 90's onwards and it consists mainly of economic migrants, whose aim is to improve their living standards and their situation. Malheiros J., 2004.

¹⁷⁵ UNODC, 2006, p. 20.

¹⁷⁶ On the issue De Sousa Santos and others emphasize that it is very difficult to estimate the number of trafficked victims. In particular, it is problematic to rely on judicial proceedings as the statistics do not distinguish between trafficking and exploitation of prostitution of others. For instance, from 1996 to 2004 there were 194 criminal proceedings, 92 of those turned into condemnation. However, these data tell us little about human trafficking. De Sousa Santos and others, 2007, p. 75. Data coming from the Service of Immigration and Border Control Services are different and they estimate that trafficked victims as well as victims of exploitation of prostitution of Brazilian nationality have been 418 in 2003, 800 in 2004, 642 in 2005, 425 in 2006 and 156 in 2007. *Ibidem.*, p. 87.

¹⁷⁷ In particular from Nigeria, Sierra Leone and Liberia. Source: Sabino, 2005, p. 265.

¹⁷⁸ De Sousa Santos and others, 2007, p. 108-109.

Apart from the very detailed and comprehensive description of the whole phenomenon,¹⁷⁹ reports on the issue emphasize the exploitative practices experienced by trafficked people, including Brazilian girls trafficked to Portugal.

There is no evidence that Brazilians undergo brutal violence, murders and abuse¹⁸⁰ comparable to the one experienced by trafficked girls from other nationalities in other European countries.¹⁸¹

However, this does not mean that they do not experience exploitation.

It is argued that Brazilian women, usually employed in indoor prostitution¹⁸² such as apartments and nigh-clubs,¹⁸³ are not free to dispose of their life and their body¹⁸⁴ as once arrived in Portugal they are deprived of their passport and therefore of their formal identity. Besides, they own an incredible amount of money to their traffickers because of the travel,¹⁸⁵ and also because of everyday expenses finding themselves in an unexpected situation of debt-bondage. They are not in a condition to escape the situation and they find themselves isolated, at least until they have not paid their debt.¹⁸⁶ The condition of isolation and lack of freedom of movement as well as absolute lack of integration with the local context is particularly stressed in the case that they are employed in the interior of the country.¹⁸⁷ It is pivotal to stress that trafficked girls find themselves in a situation

¹⁷⁹ Both the report of Peixoto and others, 2005, as well as that of De Sousa Santos and others, 2007 analyze comprehensively general trends concerning victims' background, traffickers' modus operandi in the recruitment as well as in the transportation phase, the routes, the Portuguese cities where women are more likely to be transferred because of the high demand, among other factors. The present work does not intend to focus on already investigated evidence and it chooses instead to reflect on the exploitative nature of human trafficking in Portugal.

¹⁸⁰ Peixoto, 2007, p. 84.

¹⁸¹ Among others, Nigerians nowadays and Albanians in the 90's in countries like Italy.

¹⁸² It is pivotal to notice that indoor prostitution is hidden and therefore trafficked people can hardly be reached by social workers and police. Brazilians and Ukrainians are employed in indoor prostitution while Portuguese, Romanians and women coming mainly from Nigeria are working outdoor. De Sousa Santos, 2007, pp. 100-104.

¹⁸³ See on the issue Téchio, 2006.

¹⁸⁴ The main difference between voluntary and forced prostitution lies in the fact that in the first case prostitutes dispose of their freedom and autonomy, while in the second case women find themselves without any viable alternatives besides respecting traffickers' changing rules of the game.

¹⁸⁵ The price of the flight undergoes a process of inflation: in fact, trafficked people are not expected to pay the real price of the ticket. They own their traffickers the double, triple and even more. It is particularly relevant to notice that Brazilians benefit from the exemption of visa for tourism to get to Portugal, they do not need their documents to be falsified to stay up to 90 days as tourists.

¹⁸⁶ *Ibidem*. From interviews with Dr. Christiane Coelho, Counsel, International Organization for Migration Lisbon, 20 June 2008, it has emerged that after paying their debts, trafficked women send part of the gains home, to family. On this issue it is relevant to refer to economic remittances, see Sodireitos and others, 2008, pp. 23.

¹⁸⁷ This information has been confirmed by interviews with João Peixoto, Professor, Research Centre in Economic and Organizational Sociology, Technical University of Lisbon, Lisbon, 24 April 2008 and

of subjection, dependency on the traffickers and they experience great vulnerability. They do not denounce their situation of exploitation as they are told by their traffickers that police will imprison them and then will be sent back to Brazil. For these very reasons, they lack any kind of negotiation power and they limit themselves to obey to traffickers' orders.

3.2 A brief overview of the Portuguese legislation on the issue: the dimension of repression and protection

Portugal has ratified most of the International and Regional European Instruments on human trafficking, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁸⁸

Portugal has ratified the Palermo Protocol¹⁸⁹ in 2004 as well as the Council of Europe Convention on Action against Trafficking in Human Beings, which has entered into force in 2008. It is key to underline that Portugal is part of the Group of Experts against Trafficking in Human Beings - GRETA - responsible for monitoring the compliance of member States with the obligations.

The Portuguese legislation on trafficking has undergone important changes in the last few years both with regard to the dimension of prosecution as well as to that of protection. The Portuguese Criminal Code,¹⁹⁰ recently amended, defines in article 160,

interview with Catarina Sabino, Academic Researcher in the area of migration, Research Centre in Economic and Organizational Sociology, Technical University of Lisbon, Lisbon, 24 April 2008. The information focuses on the region of Trás-os-Montes. It is relevant to underline that trafficked people's lack of integration stems both from the traffickers' control as well as from local people's discrimination against them. It is very notorious the campaign led by a group of women in Bragança, a city in the region of Trás-os-Montes, against the presence of Brazilian prostitutes in the area. The campaign was also reported by review 'Time'. See Ripley, 2003. See among others on the issue of racism in Portugal, even if not specific against women employed in sex business Marques, 2007 and Macaísta Malheiros, 2007.

¹⁸⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Assembly Resolution 45/158, 18 December 1990. It entered into force on 1 July 2003, in accordance with article 87 (1). Only 28 States signed it and 37 ratified it. The Convention does not specifically deal with human trafficking but it calls on States to respect migrants' human rights. It is particularly interesting to remark that, despite its importance, the treaty has been ratified exclusively by developing countries, namely states of origin, and it has not been adopted by countries of destination.

¹⁸⁹ The Protocol has been ratified by Decree of the President of the Republic n. 19/2004 of 2nd of April and entered into force on 10 May 2004.

¹⁹⁰ Law 59/2007 Portuguese Penal Code. Article 160 states that: 'Tráfico de pessoas as 1 — Quem oferecer, entregar, aliciar, aceitar, transportar, alojar ou acolher pessoa para fins de exploração sexual, exploração do trabalho ou extracção de órgãos: a) Por meio de violência, rapto ou ameaça grave; b) Através de ardil ou manobra fraudulenta; c) Com abuso de autoridade resultante de uma relação de dependência hierárquica, de trabalho ou familiar; d) Aproveitando -se de incapacidade psíquica ou de

the crime of human trafficking and punishes it with imprisonment from one to twelve years, depending on the level of involvement and responsibility. It contemplates both human trafficking for the purpose of sexual and labour exploitation as well as trafficking for the purpose of the removal of organs. Article 169, on the other hand, defines the crime of the encouragement and the exploitation of prostitution of others and it punishes it with the imprisonment from five months to five years.¹⁹¹

In the framework of repression and prosecution, it is important to refer to the Portuguese law N. 51/2007 of 31 August defining the objectives, the priorities and the orientations of the criminal policy for 2007/2009. Article 4 identifies trafficking in human beings as a crime of priority investigation, article 5 focuses on particularly vulnerable victims, including migrants.¹⁹² In the framework of victims' protection several steps forward have been taken in the last year, in fact the Portuguese Foreigners' law N. 23/07 of 4th July¹⁹³ contains several human-centred provisions whose aim is to prioritize trafficked people's human rights and wellbeing. Section V deals with the authorization of residence permit to victims of trafficking in human beings or smuggling of migrants. Subsequent articles, from 110 to 115, define several related

situação de especial vulnerabilidade da vítima; ou e) Mediante a obtenção do consentimento da pessoa que tem o controlo sobre a vítima; é punido com pena de prisão de três a dez anos. 2 — A mesma pena é aplicada a quem, por qualquer meio, aliciar, transportar, proceder ao alojamento ou acolhimento de menor, ou o entregar, oferecer ou aceitar, para fins de exploração sexual, exploração do trabalho ou extracção de órgãos. 3 — No caso previsto no número anterior, se o agente utilizar qualquer dos meios previstos nas alíneas do n.º 1 ou actuar profissionalmente ou com intenção lucrativa, é punido com pena de prisão de três a doze anos. 4 Quem, mediante pagamento ou outra contrapartida, oferecer, entregar, solicitar ou aceitar menor, ou obtiver ou prestar consentimento na sua adopção, é punido com pena de prisão de um a cinco anos. 5 — Quem, tendo conhecimento da prática de crime previsto nos n.os 1 e 2, utilizar os serviços ou órgãos da vítima é punido com pena de prisão de um a cinco anos, se pena mais grave lhe não couber por força de outra disposição legal. 6 — Quem reter, ocultar, danificar ou destruir documentos de identificação ou de viagem de pessoa vítima de crime previsto nos n.os 1 e 2 é punido com pena de prisão até três anos, se pena mais grave lhe não couber por força de outra disposição legal. (There is not official translation in English).

¹⁹¹ Portugal has adopted an abolitionist perspective in relation to prostitution, that is to say, the State does not prohibit the exercise either of indoor or outdoor prostitution if the conditions of lack of exploitation and consent between adults having the sexual intercourse are present. Transcrime, 2005, pp. 64-78. The recognition of two distinct conducts in the Criminal Code is crucial as the State can not treat in the same way who is responsible for running the entire process of human trafficking and who exploits prostitution in the country of destination. Judge José, Mouraz Lopes, 'Challenges to the production of knowledge on the issue: perspectives, concepts and indicators', unpublished presentation at the international conference 'Trafficking in women for sexual exploitation: Portuguese-Brazilian scenario', Coimbra, 12 June 2008.

¹⁹² Maria José Morgado, Public Prosecutor, "Public Policies in the prevention and combat to trafficking in women for the purpose of sexual exploitation – Portugal and Brazil" unpublished presentation at the International Conference 'Trafficking in women for the purpose of sexual exploitation: the Brazilian-Portuguese scenario', Coimbra, 12 June 2008.

¹⁹³ Law n.23/2007 that Approves the Legal Regime for the Entry, Stay, Exit and Removing of Foreign Citizens from the National Territory.

aspects. Article 111 deals with the concession of a reflection period, article 112 deals with the victims' entitlements prior to the concession of the residence permit, article 113 focuses on the rights of people provided with residence permit. Article 114 is particularly important as it deals with minors and it explicitly makes reference to the best interest of the minor.

It is particularly important to stress that although residence permit in case of human trafficking has been usually linked to victims' cooperation in criminal proceedings, the Portuguese government, following the example of other European countries, does not link the concession of the permit exclusively to the cooperation in criminal proceedings. In fact, decree law n.º 368/2007,¹⁹⁴ adopted on 5 November, states that the temporary residence permit is granted to victims of trafficking when some specific conditions are met. Paragraph two refers both to the security as well as to the health of the victim, of her or his family as well as to people that are close to her or him. It also makes reference to other situations of vulnerability as well as family problems.

3.3 Victims-centred strategies and policies: the 'First National Plan against Trafficking in Human Beings'

Portugal adopted in 2007 the I National Plan against Trafficking in Human Beings (2007-2010). It entered into force in 2007.¹⁹⁵ The National Plan could be considered as a development of the pilot Project 'CAIM'.¹⁹⁶ The First National Plan 2007-2010,

¹⁹⁴ Decree Law n. 368/2007 of 5 November.

¹⁹⁵ Resolution of the Presidency of Council of Ministers 81/2007 of 22 June 2007, National Plan against Trafficking in Human Beings.

¹⁹⁶ The Project CAIM stands for Cooperation, Action, Investigation and Worldvision. It is a Pilot Project in the framework of European Program EQUAL II. The Project aims at adopting a multidisciplinary perspective in order to study and to acquire new practises of interventions on the issue. The Portuguese partners of the CAIM are the Commission for Citizenship and Gender Equality, the Association for Family Planning, the High Commission for Immigration and Intercultural Dialogue, the International Organization for Migration, the Secretary General of the Ministry of Internal Affairs and the Secretary General of Justice Ministry. European partners are from Italy, Germany, Estonia, Lithuania and Poland. The main objective of the Project is to create an integrated and coordinated strategy in order to share responsibilities among the different stakeholders with reference to the protection of the victims and the fight of the crime. The Project CAIM deals with several issues, namely the study of the phenomenon, the comparison of national and foreign legislation and the analysis and proposal of measures and politics able to respond to the needs of protection and assistance to the victims. It also entails support, social integration of women victims of trafficking as well as training and cooperation among different stakeholders both at transnational as well as national level. In the framework of the Program the Training Toolkit for the Prevention and Combating of Trafficking Women for Sexual Exploitation was set up. The

preceded by the ‘Major Planning Options for 2005-2009 – The Principal Lines of Actions in the Areas in 2005-2006’¹⁹⁷ aims at identifying the main areas of actions in order to holistically face the issue.

The National Plan has been conceived as an essential tool for the sharing of responsibilities between government entities and civil society in order to plan and implement different strategies and dimensions in a coordinated and effective manner.¹⁹⁸ In particular, the measures in the Plan underline the need to approach the issue of human trafficking from a victims’ centred point of view.

As underlined by the Portuguese Commission for Citizenship and Gender Equality:

‘Both the adoption of merely punitive policies in relation to the trafficking problem and a complementary vision exclusively centred on the relevance of judicial processes, which included trafficking victims as witnesses, have been progressively altered to encompass a more holistic approach, focusing on the human dimension of the problem and not simply considering it a problem of migration, public order and organized crime.’¹⁹⁹

The National Plan has borrowed an integrated perspective in relation to human trafficking, consistently with the ‘3Ps’ approach. The structure of the Plan highlights Portugal’s commitment to deal with the issue in a comprehensive and multifaceted way. The Plan is structured in four main strategic areas: Know and Spread Information; Prevent, Raise Awareness and Train; Criminally Investigate and Suppress; and Protect, Support and Integrate.²⁰⁰

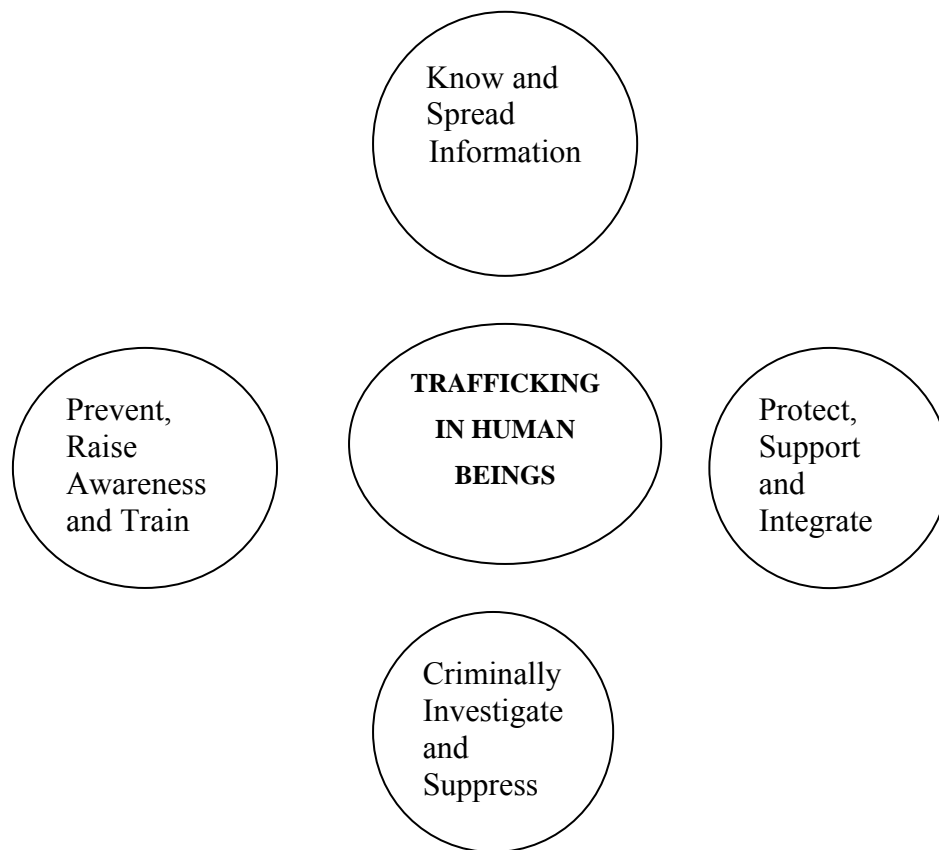
Toolkit was designed to address the need of training models in the Portuguese context. Source <http://www.caim.com.pt/> (consulted on 15 June 2008). It is important to stress that a Permanent Observatory on Security in the framework of the Ministry of Home Affairs has been established in order to identify the main tendencies of the phenomenon.

¹⁹⁷ Comissão para a Cidadania e Igualdade de Género, 2008, p. 53.

¹⁹⁸ *Ibidem.*

¹⁹⁹ *Ibidem.*, p. 51.

²⁰⁰ *Ibidem.*, p. 57.



The National Plan is human-rights centred, it acknowledges trafficked people as victims experiencing abuse and human insecurity and it chooses to prioritize their human rights, while counteracting the crime. This consideration is confirmed both by the fact that the fifty-three of the sixty-three measures contained in the Plan deal with trafficked people's protection, assistance and support on the one hand as well as with training, awareness raising and spreading of information on the issue in Portugal on the other hand.

3.3.1 To know and Spread Information

Because of the hidden nature of human trafficking, one of the priorities of the National Plan is to further investigate the phenomenon. For this reason, several funds are devoted to the realization of studies, national reports, international seminars as well as the organization of fora among different stakeholders aimed at sharing updated information and perception of the mutations of human trafficking. It is particularly interesting to

underline that one of the activities to be carried out is the realization of a national survey aimed at gathering the population's perceptions of trafficking in human beings in order to further demystify them. In addition, the strategy also includes the preparation of informative leaflets. It may be argued that these measures focus more on Portuguese society than on the victims' themselves, however it is manifest that these activities are complementary both to get to know the phenomenon as well as to create an enabling environment in which trafficked people will be considered as victims rather than prostitutes and illegal immigrants.

3.3.2 To Prevent, Raise Awareness and Train: the focus on the Portuguese context

The most striking feature concerning prevention regards the fact that only two over twenty-five measures deal with prevention in the countries of origin.²⁰¹ It is rather evident therefore that the Plan has been conceived as an instrument having the main effects in the national context. Preventive measures are very different among each others. Some of them have to do with the development of awareness raising campaigns as well as leaflets and informative notices²⁰² to be posted both on streets and in public transportation to raise people's awareness of the need to protect trafficked people. Such actions also have the objective to sensitize people likely to purchase a sexual service from a trafficked person.

Other measures on training²⁰³ are directed to socio-cultural mediators:²⁰⁴ police, judges, security forces and professionals in social and health services. Specific modules on human trafficking are going to be held in schools and in religious, sportive, recreational and cultural youth associations.

²⁰¹ The issue of prevention in the countries is dealt in paragraph 3.5.

²⁰² Particularly interesting is measure 5 of the strategy 'To Raise Awareness'. It aims at informing prostitutes about the main features defining trafficking victims in order to facilitate the recognition and to sensitize them in case they enter in contact with trafficked people.

²⁰³ It also deals with continuous training. Comissão para a Cidadania e Igualdade de Género, 2008, p. 64.

²⁰⁴ They are supposed to inform immigrants residing in Portugal and to provide consultant services to institutions working directly or indirectly with trafficking victims.

3.3.3 To Protect, Support and Integrate

The Plan aims at strengthening the dimension of protection. In particular, it defines some activities to be implemented during the reflection period; it also aims at guaranteeing effective protective measures for potential victims and their families. In the domain of victims' support, the Plan calls for the need to issue temporary one-year residential permits to trafficked people. It further specifies that 'the permit may be issued regardless of victim's collaborative level or interest in the investigation/criminal process'.²⁰⁵

It also calls for the creation of several agreements with different stakeholders and entities in order to improve trafficked people's access to assistance and services.

Trafficked people's integration is one of the priorities of the National Plan. It calls for the adoption of measures aimed at favouring victims' access to official, existing programs, professional aptitude courses. It also underlines the need to provide victims with compensation in order to provide them with some economic help.

3.3.4 To Criminally Investigate and Suppress

The measures in this area concern, for instance, the increase of inspections conducted in labour establishments suspected of housing trafficked girls. Other measures focus on the need to strengthen the synergies with different stakeholders, in particular, they underline the need to improve cooperation with regional, international organizations, non-governmental organizations (NGO's) as well as to strengthen cooperation with other entities, such as Europol, Interpol among others. Other strategies encourage the development of bilateral agreements as well as the strengthening of efforts among security forces in order to easily and rapidly detect traffickers.

²⁰⁵ Comissão para a Cidadania e Igualdade de Género, 2008,p. 65. This provision, as already seen, is also contained in Decree-Law n.368/2007 of 5 November.

3.4 Bilateral agreements: the Declaration of Cascais and the Declaration of Brasilia

The main instruments concerning bilateral cooperation in the field of human trafficking for the purpose of sexual exploitation are, respectively, the Declaration of Cascais²⁰⁶ and the Declaration of Brasilia.²⁰⁷ Both instruments, adopted in the framework of specific seminars on the issue, aim at better investigating the issue, on the one hand, and at defining common and bilateral areas of action and intervention, on the other hand. The Declarations deal in particular with border and security measures aimed at improving the cooperation between the two countries in the field of investigation and of prosecution in order to detect traffickers and to prevent the crime. In particular, important cooperation measures have been established between the Security and Frontier Service of the two countries.²⁰⁸

The Documents also stress the need to enhance research²⁰⁹ and to foster the training of professionals²¹⁰ as well as of security forces in order to make them more alert to the trafficking situations. Besides, the Declaration of Brasilia makes reference to the aspect of victims' protection as well as awareness raising.

²⁰⁶ Declaration of Cascais, adopted by Brazil and Portugal, 24 May 2006, at the conclusion of the Brazilian-Portuguese seminar on human trafficking and irregular/illegal immigration, held from 22 to 24 May 2006 in Cascais, Portugal. The Declaration is available at www.imigrante.pt/site-seminario-th/declaracao.html (consulted on 14 June 2008). For a comprehensive overview of the conference see <http://www.imigrante.pt/site-seminario-th/trafico.html> (consulted on 14 June 2008). This web-page contains the interventions made during the conference by official delegations of the Governments of Portugal and Brazil as well as by experts.

²⁰⁷ Declaration of Brasilia, adopted by Brazil and Portugal, 29 November 2006, at conclusion of the Brazilian-Portuguese seminar on human trafficking and irregular/illegal immigration, held from 27-29 November 2006 in Brasilia. The Declaration is available at www.undime.org.br/htdocs/download.php?form=.pdf&id=627 (consulted on 14 June 2008).

²⁰⁸ The documents refer in particular both to the identification of victims as well as to the identification of traffickers. Studies show that traffickers are usually both Brazilians and Portuguese. See De Sousa Santos, 2007, p. 123-144. See also Peixoto and others, 2005, pp. 228-232. The Declaration of Brasilia states in particular that the identification of victims must respect the principle of non discrimination. The two Declarations also state the need to organize seminars in order to share best practises and enhance cooperation. The Declaration of Brasilia proposes to open the debate to several stakeholders, such as, for instance, air companies, tourist entities, travel agencies as well as the hotel sector in order to start regional as well as bilateral cooperation models aimed at sharing best practices concerning the identification of victims.

²⁰⁹ For instance, the creation of some reports with case-studies aimed at exemplifying typical situations of trafficking in human beings, as well as studies concerning the actions undertaken.

²¹⁰ In particular, the Declaration of Brasilia states that training should be provided to professionals working in airports, health centres, education facilities as well as to religious centres.

Concerning the dimension of prevention as sensitization, the Service of Immigration and Border Control Services²¹¹ presented in 2007 a sensitization campaign, carried out by several organizations, entitled ‘You are not to be sold’. The main outcome of the campaign was the realization of a book of cartoons exemplifying typical situations of human trafficking, which was distributed both in Portugal and in Brazil.²¹²

3.5 Preventive measures in the countries of origin: towards the establishment of bilateral mechanism. A room for developmental initiatives?

As already underlined in the course of the dissertation, if one rejects considering human traffickers as the sole responsible for the whole phenomenon²¹³ and goes deeper, it is manifest that effective counter-trafficking strategies should not be limited to awareness raising but should focus on the root-causes of the phenomenon. It is argued that it is pivotal to act on the likelihood of potential victims to be recruited and consequently trafficked. Human beings should enjoy human rights in their own countries and should be free to migrate without being exploited.

The likelihood of being trafficked, as already seen in the precedent paragraphs and in the precedent chapter, is generated by many factors, among others, individuals’ socio-economic vulnerability. Neither the Declaration of Cascais, nor the Declaration of Brasilia, although focusing on awareness raising, make reference to strategies aimed at reducing people’s socio-economic vulnerability on the one hand, and to empower potential victims, on the other hand.

As already seen in Chapter One several Conventions as well as Recommendations on the issue of human trafficking make reference to the need to eradicate potential victims vulnerability, to create viable alternatives and to fight poverty as well as social exclusion. As already seen, Portugal is part of the main Conventions on the issue of trafficking, therefore it is important to investigate whether the Portuguese Government is engaged in the promotion or funding of any activities aimed at tackling the issue from a bottom-up, long term perspective.

²¹¹ This is an office within the framework of the Ministry of Home Affairs.

²¹² Source <http://www.nao-estas-a-venda.sef.pt/docs/campanha.pdf> (consulted on 23 June 2008).

²¹³ It is not meant that human traffickers are not responsible and criminals.

With regard to the National Plan against Trafficking in Human Beings, it is pivotal to remind that only two out of sixty-three measures deal with prevention in the countries of origin. One of them concerns the production of informative materials to inform potential migrants and trafficked people about Portuguese legislation concerning migration. The other measure refers to the need to create bilateral cooperation mechanisms. In particular it stresses the need:

‘to create regional as well as international bilateral mechanisms to promote both cooperation in the development of strategies and common means of actions in view of preventing and combating trafficking in human beings’. ²¹⁴

From the interview with the Coordinator of the National Action Plan, Dr. Manuel Albano, it has emerged that the above mentioned measure includes targeted projects of bilateral cooperation aimed at studying and comparing the good practices between Brazil and Portugal.²¹⁵ The Project also focuses on the preparation of training modules for agents involved in the detection of potential victims of trafficking. These sets of projects have been presented by the Portuguese Commission for Citizenship and Gender Equality, coordinator of the National Plan, to the European institutions. If these will be approved for receiving funds, they will start in 2009. ²¹⁶

It is particularly crucial to underline that these two measures do not deal with development cooperation activities. In fact, it could be argued that there is no evidence of significant projects in this respect²¹⁷ lots of strategies aimed at reducing victims’ vulnerability through the improvement of economic and social conditions still have to be planned and implemented.

In this realm it is important to underline that Portuguese bilateral development cooperation, realized through the Portuguese Institute for Development Support

²¹⁴ Comissão para a Cidadania e Igualdade de Género, 2008,p. 61. The entities responsible for the execution of this measure are the Ministry of Home Affairs, the Presidency of the Council of Ministers, the High Commission for Immigration and Intercultural Dialogue and the Ministry of Foreign Affairs.

²¹⁵ Telephonic interview with Dr. Manuel Albano, Coordinator of the National Plan against Trafficking in Human Beings, Portuguese Commission for Citizenship and Gender Equality, 23 June 2008.

²¹⁶ E-mail from Dr. Manuel Albano, Coordinator of the National Plan against Trafficking in Human Beings, Portuguese Commission for Citizenship and Gender Equality, 30 June 2008.

²¹⁷ Information confirmed in interviews with all privileged informers.

(IPAD)²¹⁸ is mainly directed to the Portuguese Speaking African Countries (PALOP) and to East Timor but not to Brazil.²¹⁹ At multilateral level, it is relevant to highlight that Portugal is part of several funds and organizations devoted to development cooperation among others, the Inter-American Development Bank and several United Nations agencies and funds, of whom Brazil is a beneficiary.²²⁰ It is worthwhile mentioning that the IPAD has funded some projects implemented by some Portuguese NGO's in Brazil.²²¹

²¹⁸ The Instituto Português de Apoio ao Desenvolvimento, (IPAD) is part of the Ministry of Foreign Affairs. For further information see the IPAD website <http://www.ipad.mne.gov.pt/> (consulted on 21 June 2008).

²¹⁹ Instituto Português de Apoio ao Desenvolvimento, p. 25. This information has been confirmed also in telephonic interview with Dr. Rui Duarte, Officer, IPAD, Lisbon, Lisbon, 23 June 2008.

In fact, Brazil is not part of Least Developed Countries (LDC's). It is important to remind that Brazil's human development ranks 70th position and is considered by the United Nations Development Program as a country of high human development. See <http://hdr.undp.org/en/statistics/> (consulted on 22 June 2008).

²²⁰ For this reason one could argue that Portugal indirectly contributes to development cooperation in Brazil.

²²¹ Some NGO's are carrying out Projects of development cooperation with Brazil. Among others, it is important to mention that the NGO Instituto Marques de Valle Flôr, is responsible for implementing the European Commission funded Project 'Social and Urban Inclusion', aimed at contributing to the social, economic and cultural inclusion of vulnerable segments of the population in the centre of São Paulo. See for further details <http://www.im-valle-flor.pt/gca/?id=1> (consulted on 21 June 2008). Although prevention of trafficking is not one of the objects of the Project, it may be argued that it may contribute to decrease women's vulnerability and therefore it could have a pivotal indirect preventive function.

Chapter 4

FURTHER CONSIDERATIONS

4.1 Towards shared responsibility?

As underlined in the course of the research, human trafficking is related to the issue of human mobility. The Global Commission on International Migration (GCIM) in its Report, published in 2005, dealt with the relation between migration and development, emphasizing the concept of ‘shared responsibility’. According to the experts of the Commission:

‘Creating jobs and livelihoods in low-income countries must be regarded as a shared responsibility, with countries of origin and destination acting as equal partners, sharing rights and responsibilities in a common effort to meet the challenge of development. One step in this process must be for countries of origin to assume responsibility for the welfare of their citizens, creating the conditions in which people are able to meet their needs, exercise their human rights, realize their potential and fulfil their aspirations at home. (...) It is essential for all members of the international community to implement the commitments that they have already made in relation to development and job creation in low income countries.’²²²

The previous paragraph has been devoted to the analysis of the Portuguese Government’s efforts in counter-trafficking. The following paragraphs aim at investigating, although concisely,²²³ further anti-trafficking activities carried out in Brazil by different kinds of stakeholders.

²²² Global Commission on International Migration, 2005, pp. 20-21.

²²³ The following paragraphs aim at providing an overview of the main counter-trafficking strategies carried out at national level. The analysis does not aim at reporting all the strategies realized in this field, it chooses the most significant and it investigates both the *modus operandi* of the activities as well as the stakeholders involved.

4.1.1. The Government's efforts: The Brazilian National Action Plan on human trafficking

With regard to the issue of human trafficking, it is worth noting that the Brazilian Government²²⁴ adopted an Anti-trafficking National Plan in human beings,²²⁵ that, although very recent, could be assessed as very comprehensive as it approaches the issue from an integrated point of view.

Experts from the UNODC Brazil argue in this respect that the Plan proves to be crucial in particular because the Government has not adapted all national legislation to the disposals of the Palermo Protocol on human trafficking yet.²²⁶

The Plan is composed of eleven priority actions, consisting in awareness raising, protection, prosecution, dissemination of studies and researches. Priority Number 4 is particularly important as it deals with the 'Reduction of the vulnerability of specific social groups to human trafficking'.²²⁷ In order to achieve this objective six kinds activities are expected to be implemented. Activity One is particularly important as it aims at creating mechanisms to improve the access to human rights, in particular in those municipalities and communities known to be areas where women are particularly vulnerable to be recruited. In this respect, several inter-institutional committees, human rights offices and partnerships among different stakeholders have been created in order to enhance people's access to human rights. In addition, several informative materials have been distributed in order to inform people about their access to human rights.²²⁸

The other five sets of measures deal mostly with trafficking in human beings for the purpose of labour exploitation.

As already considered in the previous chapter, public policies and service delivery in the framework of economic, social and cultural rights are far from being effective and

²²⁴ The paragraph does not take into consideration all of activities that have been developed at decentralized level by municipal and regional stakeholders. Such activities, implemented outside the framework of the Action Plan, are numerous and equally important.

²²⁵ Ministério da Justiça, 2008.

²²⁶ The Brazilian Government ratified the Palermo Protocol on human trafficking in 2004, through Decree Law N. 5017 of 12 March 2004. Source See http://www.unodc.org/brazil/pt/programasglobais_tsh_projetosnobrasil.html (consulted on 26 June 2008). It is crucial to underline that the Government has introduced the crime of human trafficking in its Criminal Code at Article 231. The article also deals with internal trafficking and it defines it as the action to 'promote, intermediate or facilitate in the national territory the recruitment, the transportation, the transfer the hosting or receiving of a person to be employed in prostitution, will be punished with 3 to 8 years of reclusion and fee'.

²²⁷ Ministério da Justiça, 2008, p. 85.

²²⁸ The organ responsible is the State Secretariat of the Human Rights (SEDH) of the Ministry of Justice.

universal in Brazil. Although the dissertation is not going to investigate Brazilian Government's public policies, it is important to underline that important sets of activities in the realm of economic, social and cultural rights are being implemented within the Ministry of Social Development and Combat to Hunger. Such activities are crucial as they contribute to the decrease of individuals' socio-economic vulnerability and therefore their likelihood to be trafficked.²²⁹

For instance, the Program 'Bolsa Familia' (Family Benefit), aims at freeing families from socio-economic insecurity, by providing them with food and economic resources, with access to social basic services and with complementary resources such as, for instance, adults' alphabetization and income generating activities.²³⁰

4.1.2 The International Community. Preventing human trafficking through specialized agencies

The regional office of the UNODC in Brazil,²³¹ responsible for managing several aspects related to the Anti-Trafficking Program, is promoting, among other initiatives, the awareness raising campaign recently launched by the United Nations Global Initiative against Human Trafficking (UN.GIFT). This campaign has, among other objectives,²³² that of informing of the risks connected to human trafficking and to raise awareness of the public in general. Several posters and videos have been widespread throughout the country in order to deconstruct the idea that human trafficking is not part of Brazilian reality. The slogan of the campaign is: 'human trafficking leaves the person without alternative'.²³³

Another awareness raising campaign was implemented by the UNODC in cooperation with the Brazilian Ministry of Justice, the Human Rights Secretary and the Federal Government. It is entitled 'First they stole her the passport, then they stole her freedom'. This sensitization activity was implemented in the framework of the campaign against

²²⁹ Elaene Rodrigues, Representative of Fortaleza Prefect's office, "Public Policies in the prevention and combat to trafficking in women for the purpose of sexual exploitation – Portugal and Brazil" unpublished presentation at the International Conference "Trafficking in women for the purpose of sexual exploitation: the Brazilian-Portuguese scenario", Coimbra, 12 June 2008.

²³⁰ Source: http://www.mds.gov.br/bolsafamilia/o_programa_bolsa_familia/o-que-e (consulted on 26 June 2008); Families must meet some requirements in order to be beneficiaries.

²³¹ For further information see <http://www.unodc.org/brazil/pt/index.html> (consulted on 27 June 2008).

²³² For a complete overview of the aims of the UN.GIFT in Brazil see <http://www.ungift.org/brazil/> (consulted on 22 June 2008).

²³³ Source: <http://www.ungift.org/brazil/> (consulted on 22 June 2008).

Human trafficking 2004.²³⁴ It is particularly important to notice that the campaign was intensified in the areas in which the likelihood of women to be trafficked is higher.

The UNODC is also working to strengthen institutional capacity: it trains public agents, police and judges, it cooperates in the revision of the relevant law, it strengthens the support to victims and witnesses. At the international level, the Program acts with agencies, institutions and the government in order to widen the interdisciplinary efforts to plan effective measures against trafficking. Of course it is important to notice that the activity of several specialized agencies in the country, such as for instance the United Nations Development Program (UNDP)²³⁵, are crucial as although they may not be focused on potential victims of trafficking, the programs they implement are supposed to eradicate individuals' vulnerability.

4.2 Going grassroots. Brazilian NGOs activities

Several Brazilian NGOs are dealing with prevention of human trafficking, mainly in the realm of awareness raising.

Among several initiatives, it is particularly important to refer to the Project Trama, started in 2004 and carried out by a network of NGOs.²³⁶ The Project aims at elaborating and implementing a set of public policies in a participatory way, involving trafficked people and their families as main protagonists of the activities.

In particular, the Project elaborated some informative materials such as a newspaper recruiting victims as well as materials explicitly referring to the risks of being deceived and trafficked.²³⁷

The Project deals with information, mobilization, awareness raising, educational campaigns, research, investigation, assistance and juridical as well as psycho-social

²³⁴ See http://www.unodc.org/brazil/pt/campanhas_tsh.html (consulted on 26 June 2008).

²³⁵ On the United Nations Development Program in Brazil see www.br.undp.org (consulted on 26 June 2008).

²³⁶ They are the Organização de Direitos Humanos Projeto Legal; the Ibiss (Instituto Brasileiro de Inovações em Saúde Social), the CRIOLA (an organization of Afro-Brazilian women) and the University of Rio Grande.

²³⁷ See Project Trama web-page at <http://www.projetotrama.org.br/home/index.asp> (consulted on 22 June 2008).

defence, compensation, as well as cooperation with NGOs and the Government. Several other NGOs are involved in projects on human trafficking.²³⁸

With regard to activities aimed at reducing victims' vulnerability, it is particularly interesting to refer to a pilot project carried out by NGOs aimed at empowering vulnerable women through micro-credit and fair trade in Fortaleza. The project's objective was to empower women and to provide them with viable income generating opportunities in the short-medium run.²³⁹ In fact, as underlined in the Chapter Two, targeted activities of development cooperation can contribute to reducing economic hardship on the one hand and to eradicate individuals' hopeless attitude towards the present and towards the future on the other hand. This project, developed in partnership with local institutions and civil society, is considered by Elaene Rodrigues, Representative of Fortaleza Prefect's office, an example of 'good practice' in the realm of trafficking prevention.²⁴⁰

4.2.1 Non traditional 'bottom-up stakeholders'. The potential role of transnational communities: bridge-building and social remittances

Since the early 1990s, several anthropologists and sociologists started considering international migration from a transnational lens. They define transnationalism as:

‘the process by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement. (...) Many migrants today build social fields that cross geographic, cultural and political borders.’²⁴¹

²³⁸ Several NGO's involved in awareness raising are for instance the Association 'BASTA' - Por uma Bahia sem Tráfico de Seres Humanos, <http://www.winrock.org.br/basta/> (consulted on 22 June 2008); the Project 'Adital', the Comitê Nacional de Enfrentamento à Violência Sexual contra Crianças e Adolescentes, <http://www.comitenacional.org.br/index.php/content/view/2.html> (consulted on 22 June 2008). Associação Brasileira de Defesa da Mulher, da Infância e da Juventude (ASBRAD)²³⁸, Chame Available at <http://www.asbrad.com.br> (consulted on 22 June 2008), IBISS, Serviço à Mulher Marginalizada²³⁸ Centro de Referência, Estudos e Ações sobre crianças e adolescentes – Cecria, Available at <http://www.smm.org.br/> (consulted on 22 June 2008) Cedim, Ministério Da Justiça, International Migrant Day, Gaatw.

²³⁹ Elaene Rodrigues, Representative of Fortaleza Prefect's office, "Public Policies in the prevention and combat to trafficking in women for the purpose of sexual exploitation – Portugal and Brazil" unpublished presentation at the International Conference 'Trafficking in women for the purpose of sexual exploitation: the Brazilian-Portuguese scenario', Coimbra, 12 June 2008

²⁴⁰ *Ibid.* Despite several efforts in investigating on this specific project, it was not possible to get to know more about the associations implementing the project.

²⁴¹ Bash and others, 1993, p. 6.

For this reason, a transnational approach to migration involves considering different stakeholders beyond those traditionally taken into account by migration scholarships,²⁴² namely the diasporas or the transnational communities.²⁴³ Peggy Levitt and Nina Sorenson argue that economic remittances, because of their crucial impact,²⁴⁴ are currently considered the most visible indicator of the ties connecting migrants to their home country.²⁴⁵ Remittances have a crucial impact in reducing socio-economic vulnerability in the countries of origin. However, it is pivotal to underline that:

‘Migrant remittances and diaspora trade and investment can make an important contribution to growth, but should not become a substitute for an economic policy that develops and draws upon the talents of people who have remained in their country of origin.’²⁴⁶

In addition, it is crucial to remark that migrants send other types of remittances to their home country, namely social remittances,²⁴⁷ meant as the sets of ideas, beliefs and information transnational communities send to their nationals in the countries of origin. Social remittances are channelled through letters, videos, cassettes, e-mails and telephone calls, among other means.²⁴⁸ Several scholars have focused on the impact²⁴⁹ of social remittances on non-migrants in the countries of origin. However, no significant

²⁴² Levitt, Sorenson, 2004, p. 3.

²⁴³ See among others Portes, 1997.

²⁴⁴ Migrant economic remittances are defined as transfers of funds from immigrants to relatives or friends in their countries of origin and they are recognized as important source of global development finance. They are considered the second largest source, after foreign direct investment, of external funding for developing countries. See on the issue North South Centre of the Council of Europe, 2006, p. 7.

²⁴⁵ Levitt, Sorenson, 2004, p. 3.

²⁴⁶ Global Commission on International Migration, 2005, pp. 30-31.

²⁴⁷ Peggy Levitt argues that there are at least three types of social remittances: normative structures, systems of practices, and social capital. Normative structures are ideas, values and beliefs. They include norms for behaviour, notions about family responsibility, principle of neighbourliness and community participations, and aspirations for social mobility. They also encompass ideas about gender, race and class identity, as mentioned. Systems of practice are the actions created by normative structures. These include how individuals delegate household tasks and how much they participate in political and civic groups. Both the values and the norms on which the social capital is based, and the social capital itself constitute social remittances. Levitt, 2001, p. 59-60.

²⁴⁸ *Ibidem*, p. 63. Other means of social remittances are transferred through their return or the visit to communities of origin; or when non-migrants visit those in the receiving country.

²⁴⁹ See among others Brainard, Brinkerhoff, 2003.

research has been focused on the relation between social remittances and the issue of human trafficking for the purpose of sexual exploitation.²⁵⁰

It would be interesting to investigate the potential role of transnational communities in preventing nationals, in the country of origin, from being trafficked to the country in which the diasporas reside.²⁵¹

It is argued that transnational communities, organized in diasporas associations,²⁵² could have a pivotal role in establishing partnerships with NGOs in the country of origin in order to build bottom-up architecture based on concrete interventions aimed at eradicating socio-economic vulnerability as well as awareness raising activities.²⁵³ In fact, it is argued that they could be suitable stakeholders because of their proximity and their belonging to both contexts: they are both nationals and migrants.²⁵⁴ Furthermore, most of diasporas associations have been established to protect and promote migrants'

²⁵⁰ Information confirmed by e-mail from Khachig Tölölyan, Editor of 'Diaspora: a journal of transnational studies', College of Letters Wesleyan University, Middletown, 12 March 2008.

²⁵¹ As already stated in the course of the dissertation, human trafficking should be considered in the broader framework of human mobility. For this reason, individuals' desire to incorporate Western or Northern living standards should not be ignored.

²⁵² Even if the topic of this paragraph has not been investigated yet, the author argues that social remittances can be a very powerful tool of social transformation. For this very reason, it is argued that each transnational community member, has the concrete chance to influence, both positively and negatively, the daily life of non-migrants in the countries of origin. This paragraph attempts to analyze the potentialities of diasporas associations and chooses not to investigate individuals' behaviour, as the issue of individuals' social remittances can not be dealt in the 'economy' of the present dissertation because of its complexity. It is however argued that transnational communities members' responsibility towards their society of origin could be found, even if not explicitly, in the African Charter on Human and People's Rights, in Chapter Two. Article 29.2 states that: 'The individual shall also have the duty to serve his national community by placing his physical and intellectual ability at his service'. This sentence could be interpreted as referring to remittances, both economic and social. There is not yet scholar agreement on the issue: there have been some comments, but their nature is merely speculative. Source: E-mail from Frans Viljoen, Director: Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa, 18 April 2008.

²⁵³ The theorization of the relation between remittance, transnationalism and trafficking has been deemed positively also by experts in the field such as Peggy Levitt and Kim Knott. E-mail from Peggy Levitt, Co-Director of the Transnational Studies Initiative and Associate at the Weatherhead Center for International Affairs and The Hauser Center for Nonprofit Organizations, Harvard University, 17 March 2008. E-mail from Kim Knott, AHRC Programme Director: Diasporas, Migration and Identities, University of Leeds, 13 March 2008.

²⁵⁴ Despite the fact that there is no human trafficking from Angola to Portugal for the purpose of sexual exploitation, the author has carried out some interviews with representatives of Angolan diaspora association to better understand the relation between transnational communities and possible interventions directed to the country of origin. In this respect, it is particularly interesting to notice that the representatives are aware of the function of bridge-builders they can perform through the channel of social remittances also in relation to human trafficking for the purpose of sexual exploitation. Interview with Jaime Araujo, Director, Casa de Angola, Lisbon, 28 February 2008. Interview with David Gironimo, Director Associação Apoio sem Limite, Lisbon, 26 February 2008. Interview with Kassiana Rodrigue, Director, Associação Aracodi, Lisbon, 7 March 2008.

human rights. Therefore, they are acting on humanitarian grounds and they are not motivated, at least in principle, by political, economic or other kinds of interests.

With regard to the specific case-study of this work, it is key to underline that the Brazilian diaspora in Portugal is not really organized in migrants' associations.²⁵⁵ If one compares the number of Angolan and Cape-verdean associations with Brazilians, it emerges that these last ones are very few.²⁵⁶ The Association 'Casa do Brasil', the most ancient and representative, deals with several issues, among others, violence experienced by Brazilian women. It is argued that such abuses are related to the situation of vulnerability stemming from women's irregular status and socio-economic weakness. The issue of human trafficking for the purpose of sexual exploitation is perceived by the Association as a very serious crime violating individuals' human rights and human dignity.²⁵⁷ 'Casa do Brasil' worked on awareness raising against human trafficking for the purpose of sexual exploitation some years ago, through partnership with a Brazilian NGO.²⁵⁸ 'Casa do Brasil' is available for counselling, support and any other activities that may help trafficked people to search for legal, psychological or any other kind of assistance. In the realm of prevention to human trafficking for the purpose of sexual exploitation, the association is not currently carrying out any kind of activities neither in the Portuguese territory nor in partnerships with other Brazilian civil society organizations in Brazil. Notwithstanding this particular case-study, it is argued that that partnerships between grassroots movements in countries of origin and diaspora associations in countries of destination are pivotal as they are based on dialogue and sharing of best practises, they combine expertise from both countries, and, in particular, they adopt a bottom-up *modus operandi*.

²⁵⁵ They are very few if compared with the number of Angolan and Cape-Verdean associations in the Portuguese context. For the list of migrants' associations on the base of nationality see: <http://www.acidi.gov.pt/modules.php?name=Content&pa=showpage&pid=117>. (consulted on 27 June 2008). It is interesting to underline that the potential relation between diasporas associations and their role in preventing human trafficking is particularly problematic in the Portuguese context. In fact, there are plenty of very active Angolan as well as Cape-Verdean associations but there is not human trafficking for the purpose of sexual exploitation from these countries to Portugal. On the other hand there is great trafficking from Brazil but very few Brazilian associations in the Portuguese territory.

²⁵⁶ They are five associations, in addition there are some Brazilian students as well as researchers' associations, namely in Porto, Lisbon and Aveiro.

²⁵⁷ Information obtained by e-mail by Gustavo Behr, Director, Casa do Brasil, Lisbon, 17 April 2009.

²⁵⁸ The Brazilian NGO is called 'Chame'. Source: interview with João Peixoto, Professor, Research Centre in Economic and Organizational Sociology, Technical University of Lisbon, 24 April 2008.

Concluding observations

The analysis of international and European legislation on the issue of human trafficking has shown that both the international community and the regional organizations have made several step forwards in acknowledging the importance of the dimension of prevention. In particular, they have recognized that structural root-causes in the countries of origin, such as socio-economic vulnerability, need to be addressed.

However, a deeper analysis has revealed that the disposals concerning prevention, in particular as human centred public policies and targeted developmental projects aimed at eradicating potential victims' socio-economic vulnerability, have hardly been translated into concrete prevention strategies by member states. As highlighted in the dissertation, governments devote great focus to the dimension of prosecution; it is argued that border control is crucial to detect traffickers, however the following considerations should not be underestimated as contemporary forms of slavery constitute a complex issue that can not be fought employing only reactive policies. As shown in the dissertation and in the specific case-study of Brazilians trafficked to Portugal, the issue of human trafficking is connected to individuals' need and desire to carry out a migratory project: traffickers' promises are perceived as an 'exit strategy' from the precarious and hopeless living conditions in the countries of origin therefore human trafficking is more about individuals' need and desire to improve their life abroad than about traffickers abducting or kidnapping them, at least in the phase of recruitment. Going grassroots, focusing attention on trafficked people and listening to their motivations is key to plan effective and human anti-trafficking policies.

On the one hand, Governments should start considering the 'Principles and Guidelines on Trafficking in Human Beings' adopted by the UNHCHR, in particular Guideline 7 urging receiving states to review and modify those immigration policies that may compel people to resort to irregular and vulnerable migration by analyzing ways to increase opportunities for legal, gainful and non-exploitative labour migration.²⁵⁹ However, it is notorious that the decision rests on economically developed states that,

²⁵⁹ Recommended Principles and Guidelines on human rights and human trafficking, United Nations Office of the High Commissioner for Human Rights, Economic and Social Council 68/2002/Add.1, 20 May 2002, Guideline 7.

apart from promoting the mobility of very high-skilled migrants, tend to select a determined number of low-skilled individuals to cover the shortcomings in ‘three Ds jobs’.²⁶⁰ In addition, low skilled migrants keep on being considered by many receiving states as needed²⁶¹ workforce rather than being regarded as human beings entitled to human rights.

On the other hand, prevention activities such as awareness raising activities in the countries of origin aimed at informing potential victims about the deceptive nature of traffickers’ promises, should be complemented by a series of interventions, specifically targeted to potential victims, that contribute to eradicating both their real as well as their perceived socio-economic vulnerability. For this reason, the dissertation argues that human-centred prevention strategies should be bottom-up oriented and should reduce the likelihood of vulnerable individuals to turn into potential and later concrete victims of trafficking. In this respect, it is suggested that national public policies and service delivery in the countries of origin need to be universal and people centred. In addition, it is argued that development cooperation initiatives need to be targeted to vulnerable people and, in particular, recipient needs must take priority over donors’ interests.

In the realm of prevention, either sensitization campaigns or developmental projects, the research calls for greater and genuine involvement of bottom-up stakeholders through partnerships between civil society organizations in the countries of origin and diaspora associations in the countries of destination. These are considered the most suitable stakeholders and their role should be limited to the implementation of projects, funded and in particular designed by top-down stakeholders such as international, regional organizations and governments. They should take active part in the process of designing, planning and implementation of the projects as they are the only actors who, in partnerships with top-down stakeholders, can develop effective and human prevention policies, bring democratic lymph, give voice to the voiceless and contribute to creating genuine democratic anti-trafficking architecture.

²⁶⁰ Namely demanding, dirty and dangerous jobs.

²⁶¹ In particular, migration flows are considered as needed because of the demographic decrease experienced by Western European countries. Peter Bosch, European Commission, D.G. Justice, Freedom and Security, ‘Towards a truly Comprehensive Policy on Migration: Challenges and Opportunities for the 21 Century’, Unpublished presentation at the ‘Summer School on Euro-Mediterranean Migration and Development’, Florence, 7 July 2008.

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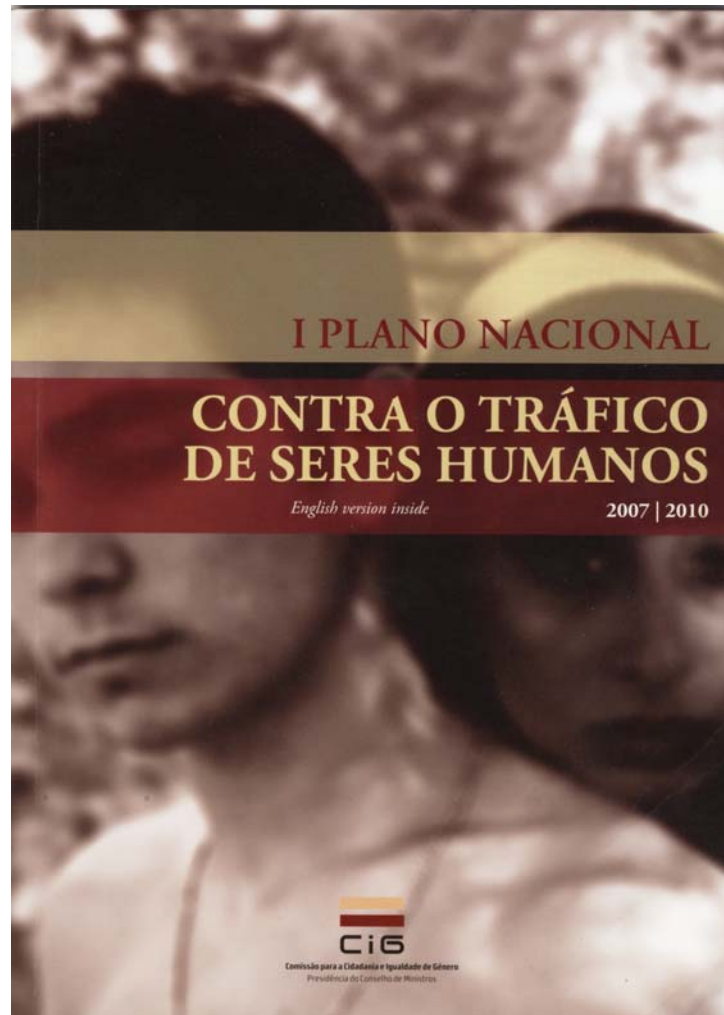
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ANNEX
**‘I Portuguese National Action Plan
Against Trafficking In Human Beings
(2007 – 2010)’**



ACRONYMS

ACIDI – High Commission for Immigration and Intercultural Dialogue
ACT – Labour Conditions Authority
ANP – National Teachers Association
ASAE – Food and Economic Security Authority
CIG – Commission for Citizenship and Gender Equality
CNPJCJR – National Commission for the Protection of At- Risk Children and Adolescents
CONFAP – National Confederation of Parent Associations
FCT – Science and Technology Foundation
GMCS – Government Communication Office
ICS – Media Institute
INE – National Institute of Statistics
MAI – Ministry of Internal Affairs
MC – Ministry of Culture
MCTES – Ministry of Science, Technology and Higher Education
MDN – Ministry of National Defence
ME – Ministry of Education
MEI – Ministry of the Economy and Innovation
MJ – Ministry of Justice
MNE – Ministry of Foreign Affairs
MOPTC – Ministry of Public Works, Transport and Communications
MS – Ministry of Health
MTSS – Ministry of Labour and Social Solidarity
OA – Law Society
ONG – Non-Governmental Organisation
PCM – Presidency of the Council of Ministers
PGR – Office of the Attorney General of the Republic.
SET – Secretary of State for Tourism
UMIC – Knowledge Society Agency

1 – To Know and Spread Information

Measures

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. To develop a monitoring system concerning the problem of human trafficking in human beings.	MAI / PCM (CIG and ACIDI) / MJ / ONG's	Implement and launch the Observatory during the first Semester of 2008.	
2. To direct funds and promote the elaboration of studies regarding the trafficking in human beings.	MCTES (FCT) / PCM (CIG)	Launch of contests, namely in the domains of Social and Human Sciences in view of encouraging scientific research on the trafficking in human beings.	Launch of a contest in 2008; number of attributed scholarships /funds.
3. To annually create a work forum, involving government entities, NGO's with work developed in the domain of trafficking in human beings and security forces/services in view of allowing the sharing of updated knowledge and defining <i>on going</i> strategies that follow-up on the mutations of the human trafficking problem.	PCM (CIG)	Carry out the annual seminar, involving the participating, different organisations working on the theme.	Gather and publish the results of the seminar (2 000 copies).
4. To prepare an annual report, containing the description and systematisation of the Portuguese situation relative to trafficking in human beings, and to contextualise the problem, indicating the numbers, characterising the entities and persons involved, describing the principal trajectories and suggesting the measures that should be implemented. This report should be translated into English and made available on the internet.	PCM (CIG)	Prepare the annual report, containing a detailed analysis of the Portuguese situation relative to the trafficking in human beings.	The report is translated into English and made available <i>on line</i> .

5. To organise an International Seminar while the Plan remains in force	PCM (CIG)		Number of participating entities and persons
6. To carry out a national survey, analysing the population's perceptions of trafficking in human beings in view of strategically demystifying and informing the population.	PCM (INE)	Development of survey that may be answered by phone in 2009.	Publicly reveal the results of the questionnaire.
7. To prepare an easy to read, informative leaflet on trafficking in human beings, namely specifying the places where trafficking victims may have recourse to assistance. The leaflet should be translated into the various languages spoken in countries where Portugal is considered a transit and/ or destination country as well as being distributed to governmental and non-governmental organisations that provide both public services and assistance	PCM (CIG e ACIDI) / MS / MTSS / ME / MNE / MAI / MJ / MEI (SET)	Preparation of leaflets and brochures (15 000 in 2008). Distribution of the leaflets by collaborating with diverse institutions.	Number of distributed leaflets by institution. Critically evaluate the different reactions to and the overall impact of the distributed, informative leaflets and brochures.
8. To develop a registration form which contains clearly, defined indicators that always ensure the confidentiality of the gathered information and the non-identification of the trafficking victims. Furthermore, the form should be used and applied by all institutions working with trafficking victims.	PCM (CIG e ACIDI) / MAI / MJ / ONG'S	Initiate its application in January, 2008.	Critically analyse the information on the registration form
9. To analyse the impact of the Visa system, particularly the emission of temporary, residential and working Visas, maintaining as guiding principles, labour norms and the promotion of human rights.	PCM / MAI / MJ /MNE	Calculate the number of emitted visas.	Prepare an analytical report.

2 – To Prevent, Raise Awareness and Train

To Prevent Prevention in the countries of origin

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. By means of regional and international bilateral mechanisms, to promote both cooperation in the development of strategies and common means of action in view of preventing and combating trafficking in human beings.	MAI / PCM (ACIDI) / MNE	Development of partnerships among the various organisations.	Number of developed partnerships.
2. To prepare informative materials, in different formats, on legislation relative to immigration. These materials should be distributed to Portuguese embassies and consulates.	MAI / PCM (ACIDI) / MJ / MNE	Calculate the number of created leaflets and the number of translated languages (10 000 copies before 2009).	Number of distributed leaflets. Number of embassies, consulates and NGO's, where the leaflets were made available.

Prevention in Portugal

Measures	Entities responsible for their executions	Process Indicators	Result Indicators
1. To insert <i>links</i> , which guide the user to facts and preventive information on trafficking in human beings, <i>in the WebPages</i> of government entities, NGO's, security forces and services as well as immigrant associations having developed work in this area.	MAI / MJ / PCM (CIG and ACIDI) / MNE / NGO's	Creation of a website providing different types of information related with the theme, such as legislation, studies, where to go to for assistance and other types of pertinent information at a transnational level. Creation of links that guide the user to the diverse <i>WebPages</i> of organisations dealing with trafficking in human beings.	Calculate the number of visitors to the newly, created website.

2. To establish protocols with website design companies (namely <i>messenger</i> and <i>chat servers</i>) so that they may add “information boxes” to their recently, created sites, thereby informing and alerting users to the dangers of trafficking in human beings.	ME / MCTES (UMIC)	To provide information on trafficking in human beings on general websites.	Establish at least 5 protocols.
3. To establish teams of cultural mediators in view of spreading information on trafficking and its related problems to immigrants residing in Portugal, as well as developing support work and providing consultant services to institutions that work directly or indirectly with trafficking victims.	PCM (ACIDI) ME / MC/ NGO’S	Training of mediators so that they are capable of Transmitting information on trafficking in human beings.	To provide Mediators with total of 4 training courses (60 mediators).
4. To include the trafficking of persons domain in police neighbourhood watch programmes and techniques in order to gather useful information which may be helpful in the detection and anticipation of trafficking situations as well as spreading awareness to the most vulnerable social groups and potential targets.	MAI	From 2008 onwards, inclusion of a module on trafficking in human beings in police programmes and techniques.	Calculate the number of awareness initiatives and the number of trained police officers.

Prevention in Portugal

To Spread Awareness

Measures	Entities responsible for their executions	Process Indicators	Result Indicators
1. To develop an advertising campaign which would be posted in the public transportation system in order to alert passengers to the need for protecting trafficking victims as well as spreading information to society in general on trafficking in human beings, inserting and characterising it within society, while equally informing people on how to act when faced with a potential human trafficking situation.	MAI / MJ / PCM (CIG and ACIDI) / MOPTC	Definition of areas and public transport vehicles used for the effects of the advertising campaign.	Evaluation of the campaign's impact.
2. With reference to trafficking in human beings and its related problems, to create and promote the message "Zero Tolerance" by means of developing advertising campaigns and spreading awareness to the community in general.	MAI / MJ / PCM (CIG and ACIDI) / MDN / MEI (SET) / GMCS		To annually develop a campaign. To annually spread at least 10 awareness initiatives.
3. Relying on the advice of experts in the human trafficking domain, to support the making and production of fiction-based films and documentaries that focus on trafficking in human beings.	MC-ICA / PCM (CIG and ACIDI)		Calculate the number of people who saw the movie. Gather their opinions.
4. To post highly visible, informative notices along Portuguese streets, principally in areas known to be endemic in street prostitution, so that awareness is spread to the potential clients of prostitutes on the inhumane reality of trafficking victims for sexual, exploitation purposes.	MOPTC		Posting of 50 notices while the Plan remains in force.
5. To prepare informative written materials in view of targeting prostitutes on trafficking in human beings for sexual exploitation	PCM (CIG) / NGO's	Production of informative leaflets and brochures.	Production of 30,000 leaflets while the Plan remains in force.

purposes, clearly indicating the characteristics of trafficking victims to facilitate understanding as well as outlining the means of support that may be provided.			
6. To prepare informative written materials in view of targeting immigrant associations, NGO's and CLAI's on the trafficking of human beings for labour exploitation purposes, clearly indicating the characteristics of trafficking victims to facilitate understanding as well as outlining the means of support that may be provided.	PCM (ACIDI) / NGO's	Number of prepared, informative materials. Number of translated languages.	Production of 50,000 leaflets while the Plan remains in force.
7. To make the media aware of the need to deal with this theme in such a way as to avoid the reinforcement of stereotypes, while maintaining and promoting a human rights perspective.	PCM (CIG and ACIDI) / GMCS /	Awareness initiatives and training courses.	To carry out 5 in 2008 and 3 in 2009.
8. Within the ambit of school-based sex education, to support the development of programmes promoting zero tolerance towards gender-based violence and discrimination.	ME / CONFAP / ANP / PCM	Creation of zero tolerance programmes.	To be carried out in 5 pilot schools per Regional School Board during the 2008/2009 academic year.
9. By means of the School Boards, to encourage the creative spirit of students by having them carry out projects on human and children's rights as well as on trafficking in human beings.	ME / ANP	Define the criteria to be met by projects. .	Organise a contest in each one of the Regional School Boards during the 2008/2009 academic year.
10. To support the carrying out of <i>workshops</i> and other activities in cultural, recreational, sport and religious, youth associations (among others).	Cultural, recreational, sport and religious, youth associations (among others)		To annually develop 10 <i>Workshops</i> .

To Train

Initial Training

Measures	Entities responsible for their executions	Process Indicators	Result Indicators
1. To create disciplinary modules on trafficking in human beings in the academic curriculum of courses, classified as human, social and criminal sciences.	MCTES, MAI		Number of courses which integrate these modules.
2. To develop training programmes for cultural mediators which analyse the advantages of prevention, support and consultant services provided to institutions working directly or indirectly with trafficking victims.	PCM (ACIDI) / MTSS	Development of modules	Number of training programmes carried out. Number of completed training courses/sessions.
3. To provide training to judges and security forces/services on the assistance methodologies and emotional support given to trafficking victims	MAI/MTSS / MJ / PGR		Number of trainees.
4. To encourage specialised training for social and human science professionals who come in contact with trafficking victims and work in social and health services so that they may better comprehend the idiosyncrasies of a trafficking victim's characteristics, his/her complexities and needs. These training courses should also allow them to learn and understand legal measures of support and integration, the services and structures to be applied when in contact with potential trafficking situations and strategies that ensure appropriate and immediate services.	PCM (CIG and ACIDI) / MS/ MTSS	Definition of training programme.	Annually train in 2008, 2009 and 2010, 50 professionals in the previously mentioned areas.

5. To create training courses directed at specific organisations such as the Labour Conditions Authority, Company Associations, Labour Unions and Immigrant Associations.	MTSS / PCM (CIG and ACIDI)	Define the specific course content to used by these target organisations.	Annually carry out two training courses in 2008, 2009 and 2010).
6. With reference to the selection and recruitment of trainees at the IEFPP level, adoption of special requisites and exceptions for victims of trafficking in human beings, by precisely taking into consideration their status as trafficking victims.	MTSS	Definition of entry criteria to training provided by the IEFPP.	
7. Keeping in mind a task-oriented vision, to ensure the development of a police training manual that includes the different dimensions of the phenomena of trafficking in human beings.	MAI	Creation of a police training manual in 2008	Number of produced and distributed training manuals.

Continuous training

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. To encourage continuous training for all professionals and civil society organisations working directly or indirectly with trafficking victims on the most recent characteristics and dynamics of this problem as well as renewed methodologies and forms of action.	PCM (CIG and ACIDI) / MAI / MS / MTSS / ME	Develop the programmatic content of continuous training courses. Announce training courses.	Annually provide three training courses in 2008, 2009 and 2010.
2. To provide senior police officers access to additional training courses offered by the European Police College (CEPOL) as well as OSCE And UNO structures.	MAI	To begin in 2008	Number of provided training courses. Number of trained police officers.

3 - To Protect, Support and to Integrate

To Protect

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. To provide a 30-60 day period of reflection to potential trafficking victims, during which they may decide to cooperate or not with the authorities. Throughout this period, they cannot be expelled from the country.	MJ; MAI	Creation of reflection groups comprising trafficking victims and individuals with specific training backgrounds to guide them.	Number of trafficking victims who cooperated with the authorities.
2. Legal provision for the creation of an Evaluation Commission, which would promote during the emergency assistance period, the identification and evaluation of persons who are effectively trafficking victims	MAI / MJ / PCM (CIG and ACIDI)	Development of an evaluative plan focusing on a set of analytical variables pertaining to the theme.	Development of the evaluation report.
3. To guarantee effective protective measures for potential witnesses and their family members by applying Law n.93/99 of the 14th of July – application of measures to protect witnesses throughout the criminal process by implementing special security programs.	MJ; MAI	An analysis of the criminal processes related with trafficking victims.	Number of witnesses benefiting from the law and the special security programs.

To Support

Measures	Entities responsible for the execution	Process Indicators	Result Indicators
1. Legal provision for the issuance of authorised, one-year, temporary residential permits to trafficking victims, keeping in mind the vulnerability of their situations which often makes it unreasonable for them to return to their country of origin. The authorised permit may be issued irregardless of the victim's collaborative level or interest in the investigation/criminal process.	MAI / MJ / PCM (CIG and ACIDI) / MTSS		Number of issued authorised, residential permits.
2. To create an Information and Support Call Centre for victims of trafficking in human beings.	PCM (ACIDI)	Effective creation of the call centre.	Number of established contacts. Sociodemographic characterisation of incoming calls. List the types of doubts and most solicited types of information.
3. To establish partnerships with public and private institutions, which have developed cooperation agreements with the government, to provide and render services to trafficking situations.	MTSS		Number of established partnerships and agreements.
4. To ensure the immediate access to the Embassy or Consulate representing the trafficking victim's country of origin. If this is not possible due to the inexistence of these services in Portugal, then	MNE	Creation of an embassy office directed at human trafficking situations.	Number of rendered services by embassy offices.

access to diplomatic representation must be provided.			
5. To promote a more effective articulation with Ministry of Justice and Ministry of Internal Affairs representatives in the exchange of information pertaining to countries of origin	MAI, MJ	Number of contacts carried out with representatives.	To carry out an evaluative study on the importance and effectiveness of collaborating with representatives on human trafficking in human beings
6. To inform trafficking victims of their rights which are ensured in legal terms, as well as specifying the different procedures available to them in indemnity claims.	MAI / MJ / PCM (CIG and ACIDI)	Preparation of an informative manual, translated into diverse languages, informing victims of their rights. Distribute the manual to different organisations involved in human	Print 5 000 manuals.
7. To provide trafficking victims with legal representation and a competent and qualified translator the moment they have received victim status.	MJ / MTSS/OA		Number of legal representation requests. Number of lawyers provided.
8. To provide free, adequate and confidential medical, psychological, social and judicial services.	MS / MTSS / PCM (CIG and ACIDI); ONG'S	To reveal the existence of these services.	Number of people using these services. Most requested type of service. Victim profile that most frequently used the services provided.
9. In articulation with other national strategies, to develop special measures in order to promote and protect the rights of trafficked children and adolescents, by particularly focusing on their safety, health and integral development.	MJ / MTSS / CNPCJR /		

10. The creation of a best practices guide to be used by governmental and nongovernmental organisations that render support and services to trafficking victims.		To develop the content of the best practices guide. To reveal the guide's plan.	Edit 1 000 copies per year.
11. To create multidisciplinary teams that would analyse the advantages of judicial psychology and cultural mediation, serve as intermediaries and promote the psycho-emotional stability of trafficking victims in view of rendering immediate support and avoiding the revictimisation of trafficked persons.	PCM (CIG and ACIDI) / MTSS/ NGO's		Number of persons assisted by these multidisciplinary teams.
12. To ensure that the protection and assistance provided to a victim is extended to his/her spouse, partner, ascendants, descendants and dependent persons with whom the trafficking victim habitually socialises	PCM (CIG and ACIDI) /MAI/MJ	Development of new legislation encompassing not only the victim but his/her spouse, partner, ascendants and descendants.	Calculate the number of victims and respective spouses, partners, ascendants and descendants who have been approached due to this norm.
13. To encourage the development of good practices between security forces, services and nongovernmental organisations in the protection and support provided to trafficking situations, notably by creating a data base containing all of the institutions that may render support and protective services to trafficked victims.	PCM/MAI / MJ / ONG's	Defining the data base and included variables.	List of institutions relying on the data base. Defining the victim profile that most frequently used the services provided. Annually reveal the data gathered by the database.
14. To establish protocols with various nongovernmental organisations operating in the native countries of trafficking victims detected in Portugal	MAI / MJ / MNE		Number of established protocols.

in view of ensuring their protection and the continuance of rendered services, should these be necessary and should trafficking victims want to return to their country of origin.			
15. Development and application of a support model should trafficking victims want to voluntarily return to their country of origin	PCM (CIG and ACIDI) / MAI / MJ	Training of professionals.	Train 20% of the technicians working in this area.

To Integrate

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. To favour the integration of trafficking victims in society and in the labour market by providing them access to official, existing programmes, professional aptitude courses, possible company incentives and increased financial support in the celebration of judicial settlements that view their integration in the work place.	MTSS / MJ	Defining the types of courses. Determining available positions in the labour market. Establishing protocols with companies in diverse areas.	Number of reintegrated persons. Number of courses provided and the number of available positions in the labour market. Number of established protocols.
2. To provide trafficking victims with different types of support to help them in their integration when and if they return to their countries of origin.	MTSS	To establish support for trafficking victims, defining criteria for the attributed types of support.	Types of support provided.

3. To direct part of the goods and assets apprehended in human trafficking investigations/convictions into the indemnity /compensation claims of trafficking victims so that they may restructure their lives and undertake new opportunities without conditions and constraints.	MJ		To channel 20% of the apprehended value into support programmes for trafficking victims.
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4 – To Criminally Investigate and Suppress

Measures

To criminally Investigate

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. The implementation of a standardised registration guide to be applied by security forces and services in human trafficking situations.	MJ / MAI / PCM (ACIDI)	To develop the registration system and reveal it to the security forces and services, keeping in mind the specifications of numerous institutions and trafficking victims comprising the system.	Application of the standardised registration guide to all security forces and services throughout 2008. Publication of the data gathered by registration guides.
2. To increase the number of inspections conducted in labour establishments which are more susceptible to housing organised crime related with human trafficking.	MJ / MAI / MEI (ASAE) /MTSS (ACT)	Develop a flexible plan of regular inspections, notably in bars, night clubs adult clubs, construction sites, seasonal establishments and housekeeping/ janitorial companies. Creation of a work group encompassing the Food and	Number of inspections carried out

		Number of inspections carried out. Economic Security Authority, the Labour Conditions Authority as well as security forces and services in order to establish an intervention and prevention plan in human trafficking cases.	
3. To collaborate and develop synergies with relevant international institutions, including regional organisations, intergovernmental agencies and international nongovernmental organisations.	MAI / MJ / MNE	Establishment of partnerships between the diverse organisations contemplated by this measure.	Verification of the number of developed partnerships in this domain.
4. To channel technical and human resources into security forces and services in order to allow for a faster and more effective detection of trafficking situations.	MAI / MJ	Development of a programme outlining a strict set of objectives as well as the necessary resources to ensure greater effectiveness in the detection of trafficking situations	
5. To reinforce adequate cooperation and articulation between security forces and services in order to combat human trafficking situations.	MAI / MJ		
6. To reinforce cooperation with international institutions, such as Europol and Interpol, as well as encouraging the development of bilateral agreements.		Define a set of measures which permit the strengthening of cooperative ties between international institutions.	Evaluation of the practical results arising from these measures.

To Suppress

Measures	Entities responsible for their execution	Process Indicators	Result Indicators
1. To adopt a comprehensive and relational approach to suppressing trafficking in human beings.	MJ / MAI	To develop a quantitative and qualitative, analytical study of the diverse perspectives integrating human trafficking throughout 2009.	Public presentation of the study.
2. To thoroughly review the convictions of human trafficking offenders as well as extending the responsibility to collective persons within this ambit.	MJ	Revision of the legislative system and respective sanctions related with trafficking in human beings.	Verify the effective application of the law. Calculate the number of criminal processes in human trafficking. Verify the sentencing scales.

